VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1958~~ 1959

No. [redacted] 35

NICHOLAS A. STIRONE, PETITIONER,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 24, 1959
CERTIORARI GRANTED APRIL 27, 1959

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APPELLANT'S APPENDIX

I.

RELEVANT DOCKET ENTRIES

1956

Mar. 20—True Bill.

Mar. 20—Indictment filed.

Mar. 23—Request of U.S. Atty, for summons filed.

Mar. 23—Summons Issued.

Mar. 29—Summons returned. Executed 3/28/56.

Apr. 2—Bond for deft. Nicholas A. Stirone taken by U. S. Comm. Snodgrass, Jr. in the amt. of $500.00 recd. and filed.

Apr. 5—The deft. Nicholas A. Stirone, pleads NOT GUILTY in open court.

Apr. 10—Motion for consolidation of trial in cases 14871, 14872 and 14873 Criminal.

Apr. 18—Objections to Motion to consolidate cases for trial filed by deft. with acceptance of service thereon.

Apr. 25—Motion for Bill of Particulars filed by deft. with acceptance of service thereon.

Apr. 25—Motion to Dismiss Indictment filed by deft. with acceptance of service thereon.

May 21—Motion for continuance filed and Order entered directing the argument on the defts. Motions in the above action be and the same hereby is continued until further Order of court. (Sorg, J)

July 12—Hearing on Motion to Dismiss and Motion for Bill of Particulars begun before Sorg, J.

Relevant Docket Entries

July 12—Hearing concluded. C.A.V. Trial memo filed. (Orders to be entered)

Sept. 14—Praecipe for appearance for deft. Nicholas A. Stirone, filed.

Sept. 26—Order of Sorg, J. entered directing U. S. to file within 30 days bill of particulars as to paragraph 6, 7, 7a, 7b, 8, 9 and 9a of deft's motion for bill of particulars and further denying all other matters in said motion.

Oct. 9—Bill of Particulars filed by U. S.

Oct. 23—Supplemental Motion to Dismiss indictment filed by deft. Stirone.

Oct. 23—Motion for more specific bill of particulars filed by deft. Stirone.

Dec. 5—Hearing on Motions for Bill of Particulars; Dismiss Indictment; Supplemental motion to dismiss Indictment and for more specific Bill of Particulars begun before Sorg, J.

Dec. 5—Hearing on above Motions concluded C.A.V. Trial memo filed. (Rep-H. Thomas) 1957.

Jan. 4—Order entered directing that the Motion of the U. S. for consolidation of Crim. Nos. 14871-14872 and 14873 is hereby denied. (Sorg, J)

Jan. 4—Order entered directing Deft's Motion to dismiss the Indictment and Supplemental Motion to dismiss the indictment are hereby denied. (Sorg, J)

Jan. 4—Order entered directing deft's. Motion for more specific Bill of Particulars is hereby denied. (Sorg, J)

Feb. 27—Praecipe for appearance for counsel for deft. filed.

Feb. 28—Motion for withdrawal of appearance of counsel for deft. filed and Order entered directing leave to file Motion to withdraw. (Sorg, J)

May 15—Subpoenas to Produce returned. Executed 5/13/57.

June 4—Trial opens before Miller, J. and jury.
June 5—Trial continues.
June 6—Trial continues.
June 7—Trial continues.
June 10—Trial continues.
June 11—Trial continues.

June 11—Defendant moves orally for judgment of acquittal. Motion denied orally by the Court.

June 12—Trial continues.
June 13—Trial continues.
June 14—Trial continues.
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June 17—Trial continues.
June 18—Trial continues.
June 19—Trial continues.
June 19—Trial concludes. . .Trial memo filed.

June 19—Jury returns with a verdict of GUILTY as charged.

June 19—Verdict sheet filed. (Bond contd. orally by Court)

June 24—Motion for Judgment of Acquittal or a New Trial filed by deft. Stirone and order entered directing the deft. shall have 10 days after the testimony and Judge's charge are transcribed to file additional reasons in support of his Motion for Judgment of Acquittal or a New Trial. (Miller, J) Acceptance of service thereon.

June 24—Motion for Arrest of Judgment filed by deft. Stirone with acceptance of service thereon.

Aug. 12—Transcripts of proceedings of trail held in Pgh, Pa. commencing 6/4/57 before Miller, J. and a Jury filed. (Volumes I, II, III)

Aug. 21—Additional reasons for New Trial filed by deft. with acceptance of service thereon.

Relevant Docket Entries

Aug. 22—Additional reason for New Trial filed by deft.

Aug. 23—Praecipe for appearance for counsel for deft. Nicholas A. Stirone, filed.

Sept. 4—Hearing on Motion for Judgment of Acquittal or New Trial and Motion for Arrest of Judgment begun before Miller, J.

Sept. 4—Hearing concluded C.A.V. Trial memo filed. (Deft's. counsel to file brief no later than 9/17/57. (Rep-H. Smith)

Sept. 25—Defendant's amendment to motion for new trial filed.

Nov. 12—Stipulation of counsel as to handbook for jurors filed.

Dec. 5—Opinion filed and Order entered directing the Deft's Motions for arrest of Judgment and Judgment of acquittal or new trial are hereby denied. Further ordered that U. S. Atty. produce the deft. before this court for imposition of sentence on 12/11/57 at 10 A.M. (Miller, J)

Dec. 6—Order entered directing the last sentence of the Order of 12/5/57 fixing the date for imposition of sentence in the above case for 12/11/57 at 10 A.M. is hereby amended as follows: U. S. Atty. to produce the deft. before this Court for sentence on 12/12/57 at 11 A.M. (Miller, J)

Dec. 12—The sentence of the Court is that the deft. Nicholas A. Stirone be imprisoned for a period of 3 yrs. and directed to pay a fine of $5000.00 and costs of prosecution. (Miller, J)

Dec. 12—Copies issued.

Dec. 12—Notice of appeal filed by Deft.

Dec. 12—Election filed by Deft. (Deft. elects not to enter upon the service of the sentence imposed Dec. 12, 1957, pending appeal taken therefrom to the U. S. Court of Appeals filed 12/12/57.)

Dec. 12—Bond in the amount of $5,000.00 pending appeal for def't Nicholas A. Stirone taken by the Clerk of Courts and filed.

Dec. 12—Bond (Cash) in the amount of $250.00 for costs on Appeal filed with the Clerk of Courts by defendant Nicholas A. Stirone.

Dec. 12—Copy of Notice of Appeal, Election not to commence service of sentence and a statment of the docket entries to date forwarded to Clerk, U.S. Court of Appeals for the Third Circuit. Letters to Counsel and to Honorable John L. Miller.

Dec. 18—Motion to depart jurisdiction filed and Order of Miller, J., entered granting permission to def't to leave jurisdiction of this Court from 12/25/57 to 1/1/58 on condition that if his [illegible]

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Jan. 13—Order entered directing the Clerk to make as part of the Record on appeal in this case all subpoenaes issued on behalf of the United States Government in the above-entitled case.

Feb. 3—Record on appeal forwarded to Clerk, United States Court of Appeals for the Third Circuit and letters sent to counsel and Court.

Feb. 10—Copy of letter received from United States Court of Appeals advising that case was docketed at No. 12,543.

Feb. 10—Receipt for documents and exhibits in the above case received from Clerk, United States Court of Appeals dated February 6, 1958.

Indictment No. 14871

II

IN THE DISTRICT COURT OF

THE UNITED STATES FOR THE

WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA vs. NICHOLAS A. STIRONE	No. 14871 Criminal (18 U.S.C. Section 1951)

The Grand Jury charges:

1. That at all times hereinafter mentioned a part of the interstate commerce of the United States has consisted of the transportation between the several states of materials and supplies for use in the making of ready mixed concrete used in the construction and erection of a factory or plant for processing of steel.

2. That at all times hereinafter mentioned, William G. Rider was a party to a contract to supply ready mixed concrete for the erection of a steel processiong plant at Allenport, Pennsylvania, and, for the purpose of performing said contract, caused supplies and materials to move in interstate commerce between various points in the United States and the site of his plant for the manufacture or mixing of ready mixed concrete, and more particularly, from outside the State of Pennsylvania into the State of Pennsylvania.

3. That at all times hereinafter referred to, Nicholas A. Stirone was President of Local No. 1058, International Hod Carriers, Building and Common Laborers Union of America, affiliated with the American Federation of Labor, President of the Heavy Engineering Railroad Contracting and Highway Construction Council, American Federation of Labor, which council is composed of, the United Brotherhood of Carpenters and Joiners of America, International Union of Operating Engineers, International Hod Carriers, Building and Common Laborers Union of America and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; and President of the Laborers District Council of Western Pennsylvania, American Federation of Labor.

4. That commencing on or about the first day of March, 1951, the exact date being to the Grand Jurors unknown, and continuing thereafter up to on or about December 31, 1953, in the Western District of Pennsylvania, and within the jurisdiction of this Court, Nicholas A. Stirone, well knowing all matters of fact aforesaid, did knowingly, wilfully, and unlawfully obstruct, delay an affect interstate commerce between the several states of the United States and the movement of the aforesaid materials and supplies in such commerce, by extortion, to-wit, by obtaining property to the value of $31,274.13 in the form of money from William G. Rider, induced by fear and by the wrongful use of threats of labor disputes and threats of the loss of, and obstruction and prevention of, performance of his contract to supply ready mixed concrete.

5. Defendant Nicholas A. Stirone threatened and caused William G. Rider to fear that preparation and delivery of the mixed concrete referred to in paragraph two would be delayed or altogether prevented and that as a result said William G. Rider would suffer financial loss if the defendant did not obtain the property as stated in paragraph four.

Indictment No. 14871

6. Defendant Nicholas A. Stirone threatened the said William G. Rider that defendant would, in his capacity as a labor representative, wrongfully and corruptly embark upon a course of oppressive action against said William G. Rider by preventing movement of supplies and materials and ready mixed concrete.

Contrary to the terms and provisions of Section 1951, Title 18, United States Code.

A True Bill

.....

Foreman

.....

D. MALCOLM ANDERSON
United States Attorney

III

MOTION FOR BILL OF PARTICULARS

Defendant moves the court for an order requiring the Government to furnish defendant, within a time to be therein specified, a written bill of particulars as to the following matters alleged in the indictment herein, as follows:

1. State the date, the names of all the parties thereto, and the terms and provisions of the contract whereunder William G. Rider was to supply ready mixed concrete for the erection of a steel processing plant at Allenport, Pennsylvania, referred to in Paragraph 2 of the indictment. State whether said contract was written or oral. If written, furnish defendant with copy. If oral, state substance of contract.

1a. State where the interstate commerce referred to in Paragraph 2 originated and where it ended.

2. State when and where William G. Rider caused supplies and materials to move in interstate commerce between the various points of the United States and the site of his plant for the manufacture of mixing of ready mixed concrete as referred to in Paragraph 2.

3. State the location of the plant of William G. Rider for the manufacture or mixing of ready mixed concrete as referred to in Paragraph 2.

4. Is it claimed by the Government that defendant was an agent and representative of Local 1058, General Construction, General Laborers and Material Handlers Union representing employees of William G. Rider in connection with the performance of his contract to supply ready mixed concrete for the erection of said steel processing plant? If so claimed, state when and where and the method by which defendant became such representative.

4a. State whether any of the employees of the labor union referred to in Paragraph 3 were employed by Rider in connection with the performance of the contract referred to in Paragraph 2.

5. State specifically when and where between March 1, 1951 and September 1, 1953, in the Western District of Pennsylvania, the defendant delayed and affected interstate commerce between the several states of the United States and the movement of the aforesaid materials and supplies in such commerce by extortion, as referred to in Paragraph 4.

6. State when and where defendant is alleged to have extorted $31,274.13 in the form of money from William G. Rider. State how the Government contends such money was extorted. Give the dates and places where property of Rider was allegedly extorted. Give the form of property involved, whether by cash, checks or other property. If in the form of checks, give the number, dates and payees. If in the form of cash, give the dates and places where such cash was allegedly turned over to defendant.

7. State when, where and to whom defendant is alleged to have made threats of labor disputes and threats of the loss of, or obstruction and prevention of, performance of his contract to supply ready mixed concrete, as referred to in Paragraph 4.

7a. State whether alleged threats were oral or in writing.

7b. If in writing, attach copies. If oral, state substance thereof.

8. State when and where and how defendant threatened and caused William G. Rider to fear that mixed concrete referred to in Paragraph 2 would be delayed or altogether prevented and as a result of said Rider would suffer financial loss if defendant did not obtain the property, as stated in Paragraph 4.

9. State when and where and under what circumstances defendant is alleged to have threatened the said Rider that defendant would, in his capacity as a labor representative, embark upon a course of oppressive action against said Rider by preventing movement of supplies and materials and ready mixed concrete, as charged in Paragraph 6.

9a. State where the "course of oppressive action" against Rider referred to in Paragraph 6 consisted of

Dated: April , 1956.

Attorneys for Defendant

IV

BILL OF PARTICULARS

This bill of particulars, furnished by the United States to the defendant Nicholas A. Stirone, pursuant to the order dated September 26, 1956 by the Honorable Herbert P. Sorg, District Judge, is as follows:

6. The defendant extorted from William G. Rider the sum of $31,274.13 by threats that he would prevent said William G. Rider from carrying out a contract to supply ready mixed concrete to Ragnar Benson, Inc., for use in the erection of a hot strip mill at Allenport, Washington County, Pennsylvania, unless payment was made to said defendant by Rider of fifty cents per cubic yard of ready mixed concrete sold by him. The said threats were made in the fall of 1951 and from February 28, 1952 to December 31, 1953, and payments were to be made when Rider received payments for the ready mixed concrete delivered. The said threats were made at a plant of the Duquesne Slag Company, at Belle Vernon, Pennsylvania, and by telephone to Charleroi, Pennsylvania. Payment was made by sixteen checks payable to the defendant. The numbers, dates and amounts of the checks is as follows

Check Number	*Date*	*Amount*
1516	2 28 52	$1,500.00
1993	9 4 52	2,000.00
2069	9 19 52	1,500.00
2073	9 23 52	2,141.75
2210	10 31 52	2,189.75
2257	11 25 52	2,423.50
2322	12 31 52	1,963.87
2497	3 3 53	1,021.25

Bill of Particulars

Check Number	*Date*	*Amount*
2541	3 20 53	1,180.75
2644	4 21 53	1,511.25
2743	5 29 53	1,713.25
2836	7 13 53	1,725.50
2895	7 29 53	749.00
2984	9 15 53	3,266.76
3167	11 14 53	1,395.50
14	12 31 53	4,992.00

7. To William G. Rider and his wife Jeanne Rider in the fall of 1951 and between February 28, 1952 and December 31, 1953 at Belle Vernon and by telephone to Charleroi, Pennsylvania.

7a. Orally.

7b. Not applicable as threats were oral.

8. In the fall of 1951 and thereafter from February 28, 1952 to December 31, 1953 at Belle Vernon, Pa. and by telephone to Charleroi, Pennsylvania, defendant orally threatened that unless payments were made as hereinabove set forth, he, the defendant, would see to it that Rider did not hold his contract to deliver ready mixed concrete to Ragnar Benson, Inc., that Rider would be unable to make delivery of the said ready mixed concrete and that if payments were made, the defendant would make sure there were no strikes on the job.

9. Threats were made at Belle Vernon, Pa., and by telephone to Charleroi, Pa., in the fall of 1951, and from February 28, 1952 to December 31, 1953 under the circumstances that the defendant was attempting to and was instilling in Rider fear of economic loss for purpose of extorting money from the said Rider. The threats in the fall of 1951 were made at the plant of the Duquesne Slag

Company in Belle Vernon, Pa., and subsequent threats were by telephone calls to Rider's place of business and home at Charleroi, Pa.

9a. Defendant threatened that, in his capacity as a labor representative, he would cause and bring about labor disputes and strikes and cause Rider to lose and be unable to comply with his contract to supply ready mixed concrete to Ragnar Benson, Inc.

D. MALCOLM ANDERSON

D. MALCOLM ANDERSON
United States Attorney

HUBERT I. TEITELBAUM
First Assistant U. S. Attorney

IN THE UNITED STATES

DISTRICT COURT FOR THE

WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	NO. 14871 CRIMINAL
v.	NO. 14872
NICHOLAS A. STIRONE	CRIMINAL NO. 14873 CRIMINAL

V

MOTION FOR CONSOLIDATION

And now comes the United States of America, by D. Malcolm Anderson, United States Attorney, and Hubert I. Teitelbaum, First Assistant United States Attorney, and moves the Court for consolidation of the trials in the above captioned matters.

D. MALCOLM ANDERSON
United States Attorney

HUBERT I. TEITELBAUM
First Assistant U. S. Attorney

VI

OBJECTIONS TO MOTION TO CONSOLIDATE CASES FOR TRIAL

Now comes Nicholas A. Stirone, defendant herein, and objects to the motion filed by the Government for consolidation for trial of the above captioned matter with No. 14872 Criminal, United States of America vs. Nicholas A. Stirone, and No. 14873 Criminal, United States of America vs. Nicholas A. Stirone, for the following reasons:

1. That the defendant has been indicted in three separate indictments charging the following violations: (a) At No. 14871—a violation of the Hobbs Act, 18 U.S.C. Section 1951; (b) at No. 14873 Criminal—a violation of the Hobbs Act, 18 U.S.C. Section 1951; and (c) at No. 14774 Criminal—a violation of the Labor Management Relations Act, 29 U.S.C. Section 186.

2. That the offenses charged in said three indictments could not have been joined in a single indictment under Rule 8 of the Federal Rules of Criminal Procedure, for the reason that they are not "of the same or similar character" and are not "based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan."

3. That, under Rule 13, the Court may not order said three indictments to be consolidated for trial, because the offenses charged therein could not have been joined in a single indictment or information.

4. That the offenses charged under the Hobbs Act (18 U.S.C. Section 1951) and the offense charged under the Labor Management Relations Act (29 U.S.C. Section 186) are not of the "same or similar character."

5. That even if the offenses charged in said indictment were considered as being of "the same or similar character", under the literal language of Rule 13, Federal Rules of Criminal Procedure read with Rule 8(a), Title 18 U.S.C., nevertheless the Government is not entitled to have said offenses consolidated for trial because the defendant would be prejudiced by such joinder of offenses for trial within the purview of Rule 14.

6. That a consolidation of said three indictments for trial would be prejudicial to the substantial rights of the defendant, would hamper and confound the defendant in making his defense, would confuse the jury in its determination of the issues involved in each of said three cases, and defendant would thereby be deprived of a fair and impartial trial in violation of the due process clause of the United States Constitution.

7. The defendant could not be fairly tried on all three indictments, or even two indictments in one trial. If it should eventuate that a jury finds insufficient evidence to convict on the indictment at No. 14871 Criminal, and on the indictment at No. 14872 Criminal—the alleged Hobbs Act violations—and is doubtful as to the indictment at No. 14873 Criminal—the alleged Labor-Management Relations Act violations—then there is danger that the evidence submitted to them on the indictments at No. 14871 Criminal, the indictment at No. 14872 Criminal may have unjustified weight in the jury's consideration of the indictment at No. 14873 Criminal. The evidence necessary for proof of extortion under 18 U.S.C. Section 1951 is not the same evidence as is necessary for proof of receipt and acceptance of money by a representative of employees under 29 U.S.C. Section 186. It, therefore would be prejudicial to the defendant to be tried on indictments so consolidated for trial.

Objections by Defendant to Consolidation

8. That the defendant would be prejudiced by the consolidation for trial of said three indictments, because the jury would be confused by the multiplicity of charges and the defendant would be hampered and confounded in making his defense. The three indictments tried together would occupy three distinct periods of time. Evidence as to one offense would be irrelevant as to the other offenses, resulting in the confusion of the jury. In short, the defendant could not be fairly tried on all three or even two of said indictments in one trial.

/s/ CHARLES J. MARGIOTTI

/s/ ARTHUR D. GATZ, JR.

/s/ V. J. RICH

Attorneys for Nicholas A. Stirone

Order of Court Refusing Consolidation

IN THE DISTRICT COURT OF

THE UNITED STATES FOR THE

WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	NO. 14871 CRIMINAL
vs.	
NICHOLAS A. STIRONE	NO. 14872 CRIMINAL
	NO. 14873 CRIMINAL

VII

ORDER

AND NOW, this 4th day of January, 1957, after argument and upon due consideration, the motion of the United States for consolidation of the above cases is hereby denied.

/s/ HERBERT P. SORG, *D.J.*

VIII

EXCERPTS FROM TRANSCRIPT OF TESTIMONY

IN OPEN COURT

Direct Examination

BY MR. TEITELBAUM:

Q. What is your name?

A. Dorothy Flanagan.

Q. What is your position?

A. Compliance supervisor with the National Labor Relations Board.

Q. Where are you located?

A. In the Clark Building, Pittsburgh.

Q. Will you tell us what documents, what affidavits are required and filed with the National Labor Relations Board and by whom?

A. All labor organizations are required to file a listing of the union officers and other documents showing how they have distributed their financial and registration information to the members and non-Communist affidavits by the officers.

Q. Do I understand then that all labor organizations within the jurisdiction of the National Labor Relations Board file such documents?

A. If they wish to come in compliance with the Act, yes.

* * * * * * * *

Q. Now, during the period from 1947 to 1950, will you look at Government Exhibit 1 and tell me who was president of the Laborers' District Council?

A. Nicholas A. Stirone, president.
Q. Was he president for all the years?
A. Yes.

BY THE COURT:

Q. That is president of the Laborers' District Council?

A. Laborers' District Council of Western Pennsylvania.

BY MR. TEITELBAUM:

Q. That's the Laborers' District Council of Western Pennsylvania, Hod Carriers—

A. Hod Carriers.

* * * * * * * *

Q. Did you also bring with you, Miss Flanagan, at my request, similar records for Local No. 1058 of the Hod Carriers, Building and Common Laborers' Union of America, International?

A. Yes, I have.

(N.L.R.B. records of Local No. 1058, 1947-1957 marked Government's Exhibit No. 2.)

Q. Are they the same type of record in reference to Local 1058 as the prior records were, as Exhibit 1 was?

A. They are the same.

Q. Again do you have the index cards?

A. I have the cards.

Q. What years do the index cards cover?

A. '47.

Q. '47 through what?

A. To the present time.

Q. Who is indicated as president of Local Union 1058 of the International Hod Carriers for each of those years?

A. Nicholas A. Stirone.

* * * * * * * *

THURMAN C. TEJAN, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. Your name is Thurman Tejan?

A. Yes, sir.

Q. Where are you from?

A. Pittsburgh, Pa.

Q. What is your employment?

A. I am the executive officer of the Constructors Association of Western Pennsylvania.

* * * * * * * *

Q. In the course of your duties as executive secretary, have you had dealings with a group known as the Heavy Engineering, Railroad Contracting and Highway Construction Council of the American Federation of Labor for Western Pennsylvania?

A. Yes, we refer to it usually as the Heavy Construction Council.

Q. That's called the Heavy Construction Council?

A. That is the short term.

Q. Then I will call it the Heavy Construction Council. What area does the Heavy Construction Council cover?

A. They also cover the 33 counties of Western Pennsylvania.

Q. For what unions do they act?

A. The unions in the Council?

Q. Yes.

A. The Laborers Union, the Operating Engineers Union, the Teamsters Union and the Carpenters are also a part of it.

BY THE COURT:

Q. That's laborers, teamsters, carpenters?

A. And operating engineers.

BY MR. TEITELBAUM:

Q. When you speak of Laborers Union, is that the official name of that the Hod Carriers, Building and Common Laborers Union?

A. The International Union. I will read it to you first out of our agreement.

Q. I think that would be good to read it.

A. International Hod Carriers, Building and Common Laborers Union of America.

Q. That's one of the unions. What is the official name of the other one?

A. The other is the International Union of Operating Engineers, United Brotherhood of Carpenters, and Joiners of America, and the International Brotherhood of Teamsters, Chauffeurs, Warehouse and Helpers of America.

THE COURT: Can we agree that these may be referred to for the purposes of this case as the Hod Carriers and Carpenters Union?

MR. TEITELBAUM: Fine.

THE COURT: And so forth. Is that satisfactory to you, Mr. Casey?

MR. CASEY: That's satisfactory to me. The carpenters, the engineers, the laborers and the teamsters, with some restriction there. I would have no objection to calling it restricted teamsters, something like that.

THE COURT: All right, we will call them restricted teamsters if you wish us to.

MR. TEITELBAUM: I will refer to them from here on in as restricted teamsters, Your Honor.

Q. So that this Council negotiates with you, is that correct, for the common laborers, the teamsters, the restricted teamsters, and the electrical workers?

A. No, carpenters and operating engineers.

Q. Carpenters and operating engineers. On behalf of those three groups, did you ever enter into an agreement with the Heavy Construction Council concerning wages, conditions of labor and so forth?

A. Yes, we have been doing that since about 1937.

Q. How often do you reach one of those agreements?

A. It depends upon whether it's a yearly agreement that we conclude or on occasion there have been two-year agreements. We apparently have one.

Q. But the agreements are for all four unions and all of the constructors?

A. That's right.

Q. The constructors cover the same 33 counties of Western Pennsylvania that you cover?

A. That's right.

Q. Who is the president of the Heavy Constructors Council?

A. The Heavy Construction Council president is Mr. Stirone.

Q. How long has Mr. Stirone been the president of the Heavy Constructors Council, from your records, of course?

A. To the best of my knowledge since its inception. I have been with the Association since 1948. He has been president since that time.

* * * * * * * *

Q. So you are the executive secretary, you sign it. You are one of the signators on that?

A. That's correct.

Q. So for the carpenters, they have their own offices, is that right?

A. Yes, president.

Q. Those matters are negotiated and trashed out with them and then they sign an agreement with them after negotiation and by bargaining?

A. Correct.

Q. Does that apply to the other ones involved wherein the wages are concerned?

A. Yes, this is signed by each union and also endorsed by the Council.

Q. But each individual union involved bargains and signs the agreement, then it's bargained for and signed by the Council generally?

A. Correct.

Q. Has that been your practice since 1947?

A. Yes, that has been the practice through the years.

Q. So to set me straight on it, all the persons who appear and this is the form made up from your original contract—

A. That's correct, yes.

Q. All the negotiations were carried on with the people who signed this in the respective crafts and the Association and the Council itself?

A. Yes, that's correct.

Q. Those negotiations during the course of these years sometime take months, is that right?

A. That's true.

Q. And those meetings are generally attended by all the interested parties?

A. Correct.

Q. Once this contract is signed, any one of these, and there is a dispute between any of your Association members and any of the unions involved, what are the mechanics of handling that?

A. The contractor generally refers the dispute to me and I take it up with the union involved in the dispute.

Q. Would you say that that was the general practice?

A. That is the general practice.

* * * * * * * *

WILLIAM C. BOWDEN, a witness in behalf of the Government, having been duly sworn, testified as follows:

Q. What is your name?

A. William C. Bowden.

Q. Are you from Pittsburgh?

A. Yes, sir, Ross Township.

Q. What is your position?

A. Secretary of the Master Builders' Association of Western Pennsylvania.

Q. What is the Master Builders' Association of Western Pennsylvania?

A. The Master Builders' Association of Western Pennsylvania is comprised of some 36 general contractors engaged in commercial, industrial and institutional building and approximately 50 sub-contractors who are associate members. The general contractors are regular members.

Q. When you say "social members," do you have a clubhouse some place?

A. I said associate.

Q. Oh, I am sorry. I thought you said social. Associate members?

A. That's right.

Q. How long have you been secretary?

A. I was employed by the Master Builders' Association on February 1st, 1946 as assistant to the then secretary, Mr. Reed. Mr. Reed died in April of '48. I was then acting secretary. Shortly thereafter I was appointed secretary of the Association. I would say sometime since 1948.

Q. So in effect you have been with them since 1946?

A. That's right.

Q. You say they build commercial buildings. What do you mean by that, stores?

A. Commercial buildings, we refer to as general office buildings like the Alcoa Building, the Bell Telephone Company, the State Office Building. Industrial buildings are referred to as industrial plants, like the J & L plant.

Q. Or like the strip mill up at Allenport, that the Pittsburgh Steel put up?

A. Yes, that would be an industrial plant. Institutional buildings, of course, are schools and churches.

Q. You don't go into homes, is that right?

A. No, sir.

Q. You have a group of general contractors who are regular members of your Association?

A. That's right.

Q. Then you have sub-contractors who are associate members of that Association?

A. That's right.

Q. What area do you cover?

A. By charter of the Associate General Contractors of America, we cover 11 counties in Western Pennsylvania.

BY THE COURT:

Q. Eleven counties?
A. Eleven, right, sir.

BY MR. TEITELBAUM:

Q. Can you tell me what they are?
A. Yes, I can.
Q. That is not an insurmountable list.
A. They are Allegheny, Armstrong, Beaver, Butler, Washington, Westmoreland, Greene, Indiana, Jefferson, Fayette. Is that eleven?
Q. Is that what it is? Is that all of it?
A. That's the counties, yes, sir.
Q. What unions—first, what does your Association do?
A. We represent the interests of management in the construction industry in connection with the labor relations, public relations, apprentice training, accident prevention and in almost every phase that the Constructors Association does in connection with their members.
Q. Do you also meet with them to determine wages and working conditions and hours of labor?
A. Yes, sir.
Q. Do you have dealings with what we have been calling here as the Heavy Engineering Council?
A. No, sir.
Q. With what labor unions do you deal?
A. Laborers' District Council of Western Pennsylvania.
Q. Do you deal
A. The Carpenters' District Council of Pittsburgh and vicinity, The Operating Engineers Union Local Unions 33 and the Cement Masons' local union.

THE COURT: I wonder if you'd keep your voice up a little bit.

A. The Operating Engineers' Union, the Cement Masons' Union, the Joint Council of Teamsters No. 40,

the Pile Drivers' Union, and in conjunction with a group of large employers, we employ boilermakers. We also participate in negotiations with the Boilermakers' Union.

Q. Do you enter into separate agreements with each of these unions?

A. Yes, sir.

Q. In other words, there's no overall body that you deal with comprising various unions?

A. Not that specify wages and working conditions. Just the other week, we negotiated a contract with the Pittsburgh Building Trades Council which affected some 22 crafts, but that has nothing to do with wages.

Q. Now, you said that you dealt among others, with the Laborers' District Council. Will you tell the Court and jury just what the Laborers' District Council is?

A. The Laborers' District Council of Western Pennsylvania is comprised of a number of local unions of common laborers who are affiliated with the International Hod Carriers, Building and Common Laborers' Union of America. We do not bargain with the total number of unions in that Council. We bargain with the unions who are represented in the counties that I mentioned, so it would probably be about 10, 11 or 12 of the unions in that Council.

Q. Now, do you deal with individual unions or do you deal with the District Council?

A. We deal with a committee comprised of each of the 11 counties plus Mr. Stirone, who acts as spokesman.

Q. Mr. Stirone is the spokesman for representatives of the eleven counties in the Hod Carriers' Union?

A. That's right, in our committee negotiations.

Q. So when you sit down to determine wages you talk to Mr. Stirone, don't you, he is the spokesman?

A. I talk to the committee. Mr. Stirone talks to our committee. I talk to the Laborers' Committee. Mr. Stirone talks to our committee. When I am addressing

my remarks to him during the course of negotiation, I am addressing them to the Laborers' Committee.

Q. In other words, they are all sitting there—

A. That's right.

Q. And you make your remarks?

A. That's right.

Q. Then if there's anything to be said back for the Laborers' Council, Mr. Stirone makes the remarks, is that right?

A. May I add so that the report is clear, that there is no restriction on the part of the contractor members on my committee or the employee members of Mr. Stirone's committee in having the right to voice their opinion at any time.

Q. Do they do it very often?

A. Yes, sir, they have.

Q. Members of your committee often get up and voice their opinion?

A. Yes, sir, much to my chagrin.

Q. Sometimes to Mr. Stirone's chagrin, does somebody get up and voice their opinion?

A. I can't testify as to what Mr. Stirone's feelings are in the matter.

Q. So he is the spokesman of the group?

A. In most of the cases, yes.

Q. He is the chairman of that or the head of that committee?

A. I would say yes.

* * * * * * * *

Q. At that time?

A. That's right.

Q. That meeting is held in an office or directors' room or some suitable—that has accommodations for a large number of people?

A. In most cases the negotiation meetings are held in the Board of Directors' office, which is also part of my office in our Association offices. Where the space is not adequate to comfortably accommodate the group, the Master Builders' Association would make arrangements for a room in the hotel that is available for relatively large groups.

Q. Usually at those meetings the Board of Directors of your Association and yourself and the officers would attend those negotiating conferences, would they not?

A. In every case, they would be attended by members of our Labor Committee who are not necessarily in every case a director or an officer, but in most every case there is a majority of directors on the committee or officers.

Q. What about the Laborers' District Council?

A. The committee is in every case comprised of a representative of the particular union in the county covered by the contractor.

Q. These matters are all set forth before everyone and if there is an agreement then that assent is apparent to all concerned and you arrange for the signing of the contract embodying the agreements that you have reached in these conferences?

A. Embodying what we finally agreed to verbally we put down in writing and sign.

Q. On those occasions both from the District Council and from your organization they are free and do express their opinion as to the various matters involved?

A. Would you please repeat the question?

Q. I say, at those conferences, are the members of your organization who are present at the conferences and the members of the District Council free to express their opinions and give their arguments relating to various phases of the labor contract?

A. Yes, that's true. I believe I testified to that before.

Q. And they frequently do that on both sides?

A. Yes, sir.

Q. Now, if there were I believe you mentioned some of these, I only got down as far as Butler County, you said I believe Allegheny, Armstrong, Beaver, Butler is that the way — and then on through the eleven?

A. Washington, Westmoreland, Indiana, Greene, Mercer. I believe Mercer is in there.

Q. In any of those counties wherein there is an institutional job or an industrial plant or a commercial building, that's usually the province of your Association, is it not?

A. When the job is held by a member of our Association.

Q. Well, we will use one I am familiar with, Landau Brothers. They are builders of commercial properties generally?

A. For many years they have been.

Q. That firm is a member of your Association?

A. That's right.

Q. If they had a job say in Westmoreland County, in Jeannette, and during the course of the job there was any dispute between the craft involved and the employer, how would that dispute be resolved, the mechanics of it?

A. Well, if the dispute on a particular job were a jurisdictional work dispute, I would be notified by the employer immediately and I would make arrangements to contact the business agent of the particular union — furnishing the men to that job of all the unions who are contributing to that dispute. In some cases it might be two unions, some cases three and as high as four, but we would gather them all together and try to determine the facts and determine the rights of the individual union contesting for the work and see that our employer was placed in the best position possible to maintain the work without stoppage by any of the unions involved.

Q. Those matters would all be referred to you and carried on by further negotiations and conferences carried on by you in the regular course of your work?

A. That's right.

Q. And that would be done with the individual locals involved?

A. Yes, sir.

Q. In the territory the job was being progressed?

A. The reason I differentiate between that type of dispute and an ordinary grievance as a result of something wrong in connection with the working conditions is that there is national machinery outside of this contract which we agree in this contract to abide by, known as the National Joint Board for Settlement of Jurisdictional Disputes, of which John T. Dunlap is currently chairman of which the Building Trades Department of the American Federation of Labor and the Associated General Contractors of America, our parent organization, have accepted and are operating under and they prescribe certain rules and regulations which we stipulate that we will be governed by and follow and these local unions stipulate that they will be governed by and follow and we so designate that recognition in our contract.

If it were a dispute of another nature in regard to a claim by the Laborers' Union, for instance, that contractor, my contractor was violating his responsibilities under the contractor, then I would go to that labor union representative of the local unions supplying a man and find out what his people had to say about how they would be aggrieved and we would try together to see whether it was the responsibility of the employer whom I represent to make an adjustment or responsibility of his union people to make the adjustment in order to resolve the issue.

Q. And you'd resolve it with those local representatives?

A. Well, if you are referring to the Laborers' Union, for instance, I might tell you and I say this most sincerely that in the eleven years that I have been secretary of the Master Builders' Association or at least associated with them, we have never had a single jurisdictional dispute which created one hour's stoppage of work nor in the eleven years of negotiations where I have been president have we had a strike over our inability to consummate a successful contract.

Q. That's all, sir.

(agreements entered into, 1953-1958 between Master Builders' Association and Common Laborers' Union marked Government's Exhibit No. 4.)

Redirect Examination

BY MR. TEITELBAUM:

Q. I show you what has been marked Government's Exhibit 4 and ask you if those are the agreements entered into from the years '53 through '58 by yourself and the Common Laborers' Union?

A. Yes, sir. These are printed copies printed by our organization.

Q. Are these generally speaking the same type of agreements that have been entered in nearly since '46?

A. Yes.

MR. TEITELBAUM: If it please the Court, I offer in evidence Government's Exhibit No. 4.

THE COURT: Do you have any objection, Mr. Casey?

MR. CASEY: I have no objection.

THE COURT: Government's Exhibit No. 4 will be admitted into evidence.

Q. Do you know offhand whether either Duquesne Slag or Duquesne Sand or William C. Rider or the Rider Supply Company was ever an associate member of your Association?

A. I know neither one of them, at least in my experience, have ever been.

Q. I see.

A. There are other organizations available for that type of contractor.

Q. I just wanted to get that clear. Now, also you know that this Laborers' District Council that you are talking about, is that the same organization as the Heavy Engineering Council with whom Mr. Tejan works?

A. Absolutely not.

Q. It is a completely separate organization, different?

A. Positively.

Recross Examination

BY MR. CASEY:

Q. I noticed, Mr. Bowden, in Government's Exhibit 4, the names, for example this is the 1956-1958, that's the current laborers' agreement, is it not, that's the one that is in effect now?

A. That's right.

Q. On behalf of the Association, who signed that?

A. Paul C. Riffle, president; R. J. Mitchell of the Trimble Company, who is the chairman of our Labor Committee and Pasquale Navarro, who is a member of the Navarro Corporation, and myself.

Q. On behalf of the District Council, the Laborers' District Council of Western Pennsylvania, who signed it?

A. Nicholas A. Strione, president; John Ward, secretary. John Ward is also a business agent of a local union here in Pittsburgh. I don't know the numbers right at the moment. Lonnie Wilson, who is a business agent, of the McKeesport local; Clyde J. Yohe is the business agent of the Butler area local; Frank Costello, I believe is business agent of the Washington County area local; Milton Piper of 226 of Pittsburgh, Pa.; Gene E. Calabrese

is a business agent of the local union up in New Castle; Lawrence Nease is a new business agent and I am not familiar with the county which he represents. Ben Brock is the business agent of Local Union No. 11 of Pittsburgh; Carl DiGennaro I believe I may have Calabrese and Carl DiGennaro mixed up. He is a business agent of one of the outlying counties. James J. Russo is business agent of Beaver County.

Q. So then in the course of the negotiations for this contract which is the last one in effect now, which is a part of Government's Exhibit No. 4, would you say that the men who signed this were all present at all or some part of the negotiations?

A. I would say that every one of them were present at all of the negotiations.

* * * * * * * *

AFTERNOON SESSION June 5, 1957
2:00 p.m.

JOSEPH V. MORESCHI, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. What is your name?

A. Joseph V. Moreschi.

Q. Where do you live?

A. In Winnetka, Illinois.

Q. What position or office do you hold?

A. I am the general president of the International Hod Carriers, Brotherhood of Common Laborers of America.

Q. Where is your office?

A. 81 15th Street, Northwest, Washington, D. C.

* * * * * * * *

Q. You have known Nick Stirone a long time, haven't you?

A. More than 30 years.

Q. He has been a good union man?

A. Very able fellow.

Q. And good for your union?

A. Very radical.

Q. That's all.

Redirect Examination

BY MR. TEITELBAUM:

Q. Mr. Moreschi, you said Mr. Stirone has been a good union man?

A. Yes, sir.

Q. If he had gone to a place on behalf of a private employer for a private salary to work out a deal for that private employer with another of your locals in some other place and gotten paid for it, would that be a good union man?

MR. CASEY: Just a moment. Objected to as argumentative.

MR. TEITELBAUM: I just asked a question.

MR. CASEY: I know you did. That's argument.

MR. TEITELBAUM: I just proposed a situation and asked him if that would be a good union man.

MR. CASEY: I object to it as argumentative.

MR. TEITELBAUM: He can answer even if it is.

THE COURT: It is argumentative.

MR. TEITELBAUM: Well, I don't mean to argue. I don't know the definition of a good union man. I just want to find out from an expert of 50 years whether or not if a union leader from Pittsburgh was hired by a private firm to go and negotiate on his behalf with another one of his locals, whether or not that would be a good union man.

MR. CASEY: If the Court please, in order not to have it argumentative, I respectfully suggest you just ask him what a good union man is. I would have no objection.

MR. TEITELBAUM: That's going to take a long time. I want to specify certain matters. If the Court feels that's argumentative, I'll withdraw it.

Q. What is a good union man?

A. A man who carries out his union duties as faithfully as possible.

Q. Can a union man also have private employment?

A. Outside of our calling?

Q. Yes.

A. If he did get private employment, he would lose his vote in our union but he'd maintain his other rights while he is an agent of a private employer.

Q. If he were in private employment, he would lose his right to vote in your union?

A. Yes, sir, if he was engaged for livelihood elsewhere, yes, sir.

Q. Can he on behalf of other firms - can he represent other people in their relation to your union?

A. There are labor relations men, who belong to all crafts, who represent the employers.

Q. Can they be a member of the union?

A. Yes, sir.

Q. A man can represent management and still be a member of your union?

A. As labor relation men, yes, sir. There are foremen superintendents.

Q. I see.

A. While in that capacity they have no vote in the local, no voice or vote.

Q. Back in 1944, did you have charges against Strone personally?

A. No, sir, the local.

Q. Never any charges against Stirone?

A. No, sir.

Q. In 1944, did Mr. Stirone refuse to appear at your headquarters?

A. Not that I know.

Q. Did you order him to appear?

A. I don't recollect.

Q. You don't remember whether you did or not?

A. No. He never refused when I ever ordered him.

Q. Have you ever heard that he went up to Johnstown and took over a local union from Mr. Russell?

MR. CASEY: Objected to as hearsay.

MR. TEITELBAUM: Certainly it's hearsay, Your Honor. When a man says he is a good union man, he is talking about his reputation.

THE COURT: Objection overruled. Go ahead.

A. I had no knowledge he ever took over any local, because none of our representatives had such authority.

Q. Did you ever hear that a man by the name of Mr. Adams filed suit against him?

A. No, I did not hear that.

Q. To be reinstated in his local union?

A. No, I did not.

Q. Did you ever hear Mr. Adams made sworn charges in a state court up here that Mr. Stirone extorted money?

MR. CASEY: If the Court please, I object to the line of re-direct examination.

THE COURT: Sustained.

MR. TEITELBAUM: May we come to side bar?

(At side bar)

MR. TEITELBAUM: As I understand the law, when somebody puts his reputation in evidence as this man has now done by asking that question, was he a good union man, then I am not restricted to

facts which can be proved because his reputation as a good union man would depend on more than that. If he had a reputation of having extorted money and it was public knowledge, public knowledge in the city, I just wonder if I can't ask him about that.

MR. CASEY: The issue here is whether he is an honest, law-abiding man, not a good union man. This man might have ideas of a good union man, strong-arm methods or doing anything in order to accomplish their ends, which has nothing to do with that.

MR. TEITELBAUM: Then I ought to find out what he thinks a good union man is.

THE COURT: He has already testified he didn't know anything about these things. All he knew there was some kind of a suit filed. You have gone far beyond that in your examination of him.

MR. TEITELBAUM: Oh yes. I wanted to know whether he knew he extorted money on the Liberty Tubes, if he knew he extorted money out here in the Airport. These were all public charges. I think the International had ought to have known them.

MR. CASEY: Public charges, but they were resolved in favor of him.

MR. TEITELBAUM: But if the head of the International doesn't even know the charges were made, then he doesn't have any idea whether he was a good union manager not.

THE COURT: I have sustained the objection. I am going to stick to it.

(In open court)

Q. Do you keep a pretty close eye on what the various people are doing around the country?

A. I try my best.

Q. You usually know what is going on?

A. We have a thousand locals in many areas. We do our best through our men. These regional offices are represented to keep fully.

Q. Now, you said Mr. Stroble was a good union man. I wonder what a good union man is. Would you say a man who uses strong arm methods is a good union man?

A. No.

MR. CASEY: Objected to as a leading question. He asked him what a good union man is and then he puts a question to him that suggests the answer.

MR. TEITELBAUM: I want to find the basis for the statement that he was a good union man.

MR. CASEY: Ask him that. I object to the line of questioning as being leading.

THE COURT: It is leading.

MR. TEITELBAUM: All right, sir.

Q. Do your rules and regulations when you have these conventions discuss the methods that are to be used in organizing unions and in negotiating wage disputes?

A. In the national convention?

Q. Yes.

A. They are mostly all local matters, regional or district states and so forth.

Q. You mean you don't discuss that nationally at all?

A. Every organization has their own autonomous right to enter a contract with the employer in their area.

Q. Do you discuss what are good union practices and what are bad union practices?

A. We generally try to educate them to the best knowledge possible to be cooperative and to assist in carrying out to protect their membership in the local.

Q. What do you tell them about things like strong arm methods and beating people up?

A. We don't.

MR. CASEY: Objected to?

A. We don't

MR. CASEY: Just a moment.

A. We don't

MR. CASEY: Just a moment. Objected to

THE COURT: Objection overruled.

A. We don't instruct nobody, like any other citize we ask members and officers to be truly respectable to a laws, whether our union or our country.

Q. So you go give them those instructions not to us those kind of methods, is that right?

A. Yes, sir.

Q. You send these advisors — what did you c them? Consultants —

A. Consultant-conciliators.

Q. Consultant-conciliators. Do they go around a tell these men how to operate?

MR. CASEY: Just a moment. That's obje to as being purely hearsay.

THE COURT: Objection overruled.

A. We tell them to educate our organization and who work in our ealling the best performance in order preserve and advance their welfare.

Q. What do you tell them —

A. — all within the laws of our union and country.

Q. What do you tell them to do about strong a methods and stuff like that?

A. We don't tolerate such things.

Q. You don't approve of it?

A. No, sir.

MR. CASEY: If the Court please, this quest unimportant as it is, I move it be stricken from record as not responsive to the question.

THE COURT: Motion is denied. Mr. Ca

(In open court)

RICHARD C. WITT, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. PALETTA:

Q. What is your name?

A. Richard C. Witt.

Q. What is your occupation?

A. Currently I am a buyer for the Pittsburgh Steel Company.

Q. How long have you been with Pittsburgh Steel Company?

A. Since December 3rd, 1951.

Q. Did you receive a subpoena duces tecum from the Government to produce certain documents?

A. I did.

Q. Do you have those with you?

A. Yes, I do.

* * * * * * *

Q. Are you telling us that you don't know or there was no other contract increasing the facilities there?

A. Not of the hot strip mill. We did build other mills at the same time.

Q. Did Ragnar Benson build those a little later?

A. I believe that they built one of them which was a separate contract, and had nothing to do with this.

Q. Had nothing to do with this?

A. Nothing to do with this.

Q. They continued to build while they were there.

A. Yes, sir.

Q. The next year or so. What was the nature of that building?

A. Was that a cold strip mill?
A. That was a cold strip mill.
Q. What was this one?
A. Hot strip mill.
Q. The original specifications were for the hot strip mill and then sometime later, Ragnar Benson got a contract for a cold strip mill in addition to this?
A. Yes, sir.
Q. And that for the cold strip mill would be other papers specifying a price and specifications relating to that cold strip mill?
A. Yes, sir.
Q. And the Government subpoenaed and asked you for those?
A. No, sir.
Q. Just for the hot strip mill?
A. Yes, sir.

* * * * * * * *

ROBERT ONG, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. PALETTA:
Q. What is your name?
A. Robert Ong.
Q. What is your occupation?
A. Purchasing agent for Ragnar Benson, Incorporated.
Q. How long have you worked for Ragnar Benson Incorporated?
A. Since January, 1948.
Q. Mr. Ong, did you receive a subpoena duces tecum for certain documents, from the Government?
A. Yes, I did.
Q. Do you have those documents with you?
A. I do.

(Original purchase order by Ragnar Benson to Rider Supply, and three revisions marked Government's Exhibit No. 10.)

Q. Could you tell us briefly what kind of work Ragnar Benson does?

A. We are general contractors with main offices in Chicago, Illinois and we have done commercial and industrial construction work within the United States over a period of the last 30, 35 years.

Q. Now, in 1951, do you of your own knowledge know whether or not Ragnar Benson, Incorporated, was the prime contractor in the construction of a hot strip mill for the Pittsburgh Steel Company at Allenport, Pa.?

A. Yes, we were.

Q. And do you know who supplied the ready-mixed concrete for this hot strip mill being constructed at Allenport, Pa.?

A. It was supplied by the Rider Supply Company, North Charleroi, Pa.

Q. Now, Mr. Ong, I show you Government's Exhibit 10 marked for identification and ask you to tell me what this group is?

A. This is the original purchase order issued by Ragnar Benson, Incorporated, to Rider Supply Company, covering the purchase of ready-mixed concrete for the construction of the hot strip mill at Allenport for Pittsburg Steel Company and amended by three subsequent revisions at later dates, to increase the unit price paid for this concrete.

Q. Do you have photostatic copies, Mr. Ong?

A. Of those?

Q. Of the original purchase order there and the revisions?

A. No, just those.

MR. CASEY: Is Mr. Witt still here? Will you wait here a minute.

MR. TEITELBAUM: Your Honor, I move that Government's Exhibit No. 10, the purchase order of Ragnar Benson, Incorporated, to William Rider, Rider Supply Company, for the purchase of ready-mixed concrete for the hot strip mill at Allenport, Pa., be admitted into evidence.

THE COURT: Have you seen it, Mr. Casey?

MR. CASEY: Yes.

THE COURT: Do you have any objection?

MR. CASEY: I only object to the statement about the cold strip mill.

THE COURT: You what?

MR. CASEY: The papers of the exhibit also include contract and notations concerning the cold strip mill as well as the hot. With that understanding, I have no objection.

THE COURT: All right, the Exhibit No. 10 will be admitted.

Q. Now, I show you Government's Exhibit No. 10, Mr. Ong, and ask you J.K. 1446, is that correct—that is a serial number for what?

A. That is a serial number assigned for our own accounting purposes to designate the hot strip mill project.

Q. And that purchase order was for ready-mixed concrete, is that right?

A. That is correct.

Q. And on the basis of that purchase order was the ready-mixed concrete purchased from William Rider on JK 1446, was that ready-mixed concrete specifically for the hot strip mill?

A. Yes, it was.

Q. That's all I have.

Cross Examination

BY MR. CASEY:

Q. I notice on there, sir, in that exhibit, Charleroi

Supply Company, something pertaining to that. It's attached to the exhibit, the last page?

A. That is a quotation which we also received from one of Rider Supply Company's competitors at the time we were bidding the job and it's customary that we attach other quotations to the purchase order file.

Q. Before you got the job you went out and you got quotations from the various concrete suppliers in the territory, is that right?

A. That's correct.

Q. One of which was the Charleroi Supply Company?

A. That's right.

Q. Does your record show whether you got any from Rider Supply Company?

A. We do not have a written quotation from Rider Supply Company. To the best of my knowledge it was a verbal quotation made to our vice-president, Mr. Kassab.

Q. Commonly known as Jake Kassab, is that it?

A. That's right.

Q. Is that all the papers that there is regarding this contract and all the formal papers?

A. These are the only formal papers existing between Ragnar Benson and Rider Supply Company in so far as the purchase of materials is concerned.

Q. That's all, sir.

* * * * * * * *

JOSEPH A. PASUIT, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. PALETTA:

Q. Will you give us your name?

A. Joseph A. Pasuit.

Q. What is your occupation?

A. I work in the Navigation Branch of the Corps of Engineers, United States Army.

* * * * * * * *

Q. Mr. Pasuit, I show you Government's Exhibit 11 and I show you Government's Exhibit 12. Now, can you tell me from Government's Exhibit 12, was the dredge boat "Admiral" of the Duquesne Sand Company dredging sand on the Ohio River during the year 1951?

A. Yes, sir.

Q. Can you tell me the location where the sand was being dredged by the boat "Admiral" in 1951?

A. Yes, sir.

Q. How can you tell me that?

A. Duquesne Sand Company submits reports where the "Admiral" is dredging and it gives the mileage and the bank, right bank, left bank and how many miles below Pittsburgh. We check the various points by checking our navigation chart.

Q. What bank was given as the location of the dredge boat "Admiral" during 1951?

A. 1951 it was dredging on Mile 51.3, left bank, That's near Cluster Island, West Virginia.

Q. Now, how can you tell it's near Cluster Island, West Virginia?

A. Cluster Island, West Virginia stands from Mile 51 and thence to about 52.5.

THE COURT: What is the name of that boat?

MR. PALETTA: The "Admiral."

Q. In what state was this portion of the river located?

A. West Virginia.

Q. Now, was the dredge boat "Admiral" dredging sand at that same location all through '51?

A. All through '51.

Q. How about in '52 where was the dredge boat "Admiral" dredging sand?

A. In 52 it dredged in West Virginia and also Ohio.

Q. How do you know?

A. Well, the left bank of the Ohio River is West Virginia and the right bank is Ohio. They have been dredging on the right bank of the Ohio River and also on the left bank.

Q. Did they dredge in West Virginia all through '52?

A. Well, West Virginia and Ohio.

Q. Were they dredging sand in West Virginia and Ohio all through '52?

A. That's right, sir.

Q. How about 1953?

A. In 1953 they dredged also in West Virginia and Ohio.

Q. Is that the only place they dredged?

A. Yes, sir.

Q. That's all I have.

* * * * * * *

GEORGE HERBERT KEISLING, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. PALETTA:

Q. What is your name?

A. George Herbert Keisling.

Q. What is your occupation?

A. Assistant controller of the Pittsburgh Steel Company.

Q. How long have you been with the Pittsburgh Steel Company?

A. Since November of 1926.

Q. Are you familiar with the Pittsburgh Steel plant at Allenport Pennsylvania?

A. My duties are confined to the general office here in Pittsburgh and my acquaintance with the plant at Allenport is only on occasional visitation.

Q. What did you say your actual position was with the Pittsburgh Steel Company?

A. The maintenance of the financial and accounting record of the company.

Q. Now, in the course of your duties does that make you familiar with all the operations of the Pittsburgh Steel Company?

A. In a general way.

Q. In a general way. That would make you also familiar in a general way with the operations of the Pittsburgh Steel Company plant, is that correct, at Allenport?

A. Yes.

Q. Now, as a result of your familiarity with the financial dealings of this company, could you tell us what product is manufactured at the Allenport plant of the Pittsburgh Steel Company?

A. Well, we manufacture hot rolled sheet and strip, cold rolled sheet and strip and seamless tubing.

Q. In regard to the hot strip mill, specifically what is the product that is manufactured there?

A. Hot rolled sheet and strip.

Q. Now, can you tell us the purposes that these hot rolled sheet and strip are used?

MR. CASEY: That's objected to as immaterial.

MR. PALETTA: We are going to contend that it isn't Your Honor. My next question, of course, will show that fact.

THE COURT: Objection overruled.

A. The product of the mill is used in the automotive and appliance industry. It's a flat rolled steel product

Q. Do you ship this product out of state?

A. Yes.

Q. What are some of the big points of distribution?

MR. CASEY: I'd like to have an objection to any question relating to the out of state shipments so far as Pittsburgh Steel is concerned.

THE COURT: Relating to what?

MR. CASEY: Any shipments out of state.

THE COURT: Why?

MR. CASEY: I think there's nothing material to this matter.

MR. PALETTA: It helps to show interstate commerce, Your Honor. Interstate commerce sand coming in and products of the plant that was constructed going out.

MR. CASEY: It's immaterial as showing what Gulf transports on the river interstate.

MR. TEITELBAUM: The Act provides that any interference with commerce in any way and to any degree is an interference with commerce, and here was an operation they were building a plant, the products of which would be shipped in interstate commerce. Therefore any interference with the building of that plant would be an interference with interstate commerce, just as the interference in dangerous cases where the building of a ship line and unloading of freight cars in the building of a line. Congress intended any type of interference in any way or degree.

MR. CASEY: In those cases, truck cases, ship cases, it involves a transportation facility or the actual transportation itself such as the truck cases or cases of those type. Here we are to the point now where the only thing in this record is that Raignar Benson is evidently a foreign corporation. I don't think that's clearly established. They say their head

office is somewhere in Minnesota under the witness, and contracted to build a plant for Pittsburgh Steel at Allenport, a hot roll mill. That's as far as we go.

MR. TEITELBAUM: In United States vs. Masiello, 235 Fed. Second, 279, we had the manufacturer who distributed in interstate commerce. Any interference with that manufacturer was considered to be an interference with commerce. In the well-known Hulahan case, the victims, the extortees, were engaged in building a home development project and were dependent upon commerce for material supplies and equipment. They were also building a flour packaging and storage plant, which facilities were used the storage plant used its facilities, they obtained grain and distributed products through interstate commerce. The victim, remember, was the firm who built the plant. That's the exact situation with Pittsburgh Steel.

MR. CASEY: If the Court will read that opinion, you will find out that was raised and the question was involved there because the lumber was coming from Texas and Georgia and on the West Coast and the material and men were being transported so that they didn't necessarily need to pass upon the flour mill proposition.

THE COURT: The question whether it is interstate commerce is a question for the Court, in any event.

MR. CASEY: I presume that's why Your Honor is hearing this evidence. That's the reason for my objection. I say that in the state of the record as it is now, the question as to Pittsburgh Steel being engaged in interstate commerce under the state of the record as it is here, that it's immaterial and irrelevant.

THE COURT: Your objection will be overruled.

George Hebert Keisling - Cross

Q. Would you list a few of the major points of distribution where these particular products from the hot strip mill were shipped?

A. Well, since it goes into the automotive industry, a major point would be the State of Michigan or Detroit generally and another point would be Louisville, Kentucky, where the appliance industry is.

Q. Do you know how it is shipped?

A. By rail generally.

Q. Generally by rail?

A. Or truck.

Q. Could you tell us some of the component raw materials which go into the making of these products in the hot strip mill?

A. The hot strip product itself is made from a slag which comes from our Monessen plant. The slabs, of course, the basic material

MR. CASEY: Now if the Court please, in order not to be coming up here

THE COURT: You have the right to make any objections you wish to make.

MR. CASEY: I'd like to have a continuing objection to any testimony of this witness relating to the interstate commerce phase of the plant, either of the materials coming in or the material going out.

THE COURT: It is understood that this testimony is under your objection.

Q. Would you continue?

A. The basic material, of course, in steel is iron ore.

Q. Where does this iron ore come from?

A. It comes from Minnesota, and there's a small portion of it imported from South America.

Q. That's all I have. You may cross examine.

Cross Examination

BY MR. CASEY:

Q. Are you familiar with this situation in 1951 at

the time the Ragnar Benson started to build the new hot roll mill or hot strip mill?

A. Yes, sir, I held my present position there.

Q. At that time the plant was operating, the Pittsburgh Steel Company, some witness said yesterday about six or eight miles away was another plant?

A. That's right, six or eight distance between the two plants.

Q. Is that where this ore and the seamless tube and the strip, steel strip for the auto industry did it also come from those plants?

A. No, the situation is this: That our basic steel making plant is at Monessen and that's where the iron ore is used to produce a slab.

Q. So what you are telling us that Pittsburgh Steel in its basic and main plant at Monessen, Pennsylvania, it is engaged in interstate commerce in that it sends this material out to Michigan and other places and it gets iron ore and other materials from Minnesota into that plant?

A. We have the same condition in our Allenport plant. They also ship material out in a like manner.

Q. With reference to the new hot mill at Allenport, that was a new venture, wasn't it?

A. Yes, it was.

Q. And that same thing applies to the new cold mill as of 1952, that was a new venture?

A. Yes, the new cold mill didn't go into operation, I believe, until 1954.

Q. Until 1954 it went in operation. What about the new hot mill, when did it go into operation?

A. In 1953.

Q. Do you know what time in 1953 it went into operation?

A. Early in 1953.

Q. Is there any way to specify?

A. I would say March.

Q. So up until that time at least any hot strip or hot sheet that came out of the mill, the first mill built by Ragnar Benson there, nothing went out of there at least until March of 1953.

A. Yes, we didn't have a hot rolled plant.

Q. As far as the other addition was concerned, the cold mill didn't get into operation until 1954 sometime?

A. Yes, sir.

Q. That's all.

Redirect Examination

BY MR. PALETTA:

Q. Mr. Keisling, if the plant had not been built by March of 1953, no products could have come in or gone out, is that correct? If you hadn't had a plant at Allenport, could you have shipped out products?

A. Well, we had basic steel, we had slabs and ingots for sale, which we were selling to the same industry.

Q. If you hadn't built a plant at Allenport, Pennsylvania, could you have made hot strips at Allenport, Pennsylvania?

A. No.

Q. Let me ask you one other question: What percentage of the product from the hot strip mill was shipped interstate, do you know?

A. About 80 per cent.

Q. That's all.

CLIFFORD H. CRAIN, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct examination

BY MR. PALETTA:

Q. Give us your name, please.

A. Clifford H. Crain.

Q. Mr. Crain, are you connected with the Duquesne Sand Company?

A. I am secretary-treasurer of the Duquesne Sand Company.

Q. And are you connected with Crain Brothers?

A. I am the president of Crain Brothers.

Q. Now, what is the business of Duquesne Sand Company?

A. Duquesne Sand Company owns a dredge and some barges. We dredge sand from the river, clean it and process it and transport it to Pittsburgh and for sale.

Q. Now, I first want to ask you about your functions and about the business of the Duquesne Sand Company. That is, did Duquesne Sand Company sell products to the Duquesne Slag Products Company from 1951 to the end of 1953?

MR. CASEY: Objected to as leading.

THE COURT: It is leading, Mr. Paletta.

Q. Was there any—can you tell us if there was any connection between Duquesne Sand Company and Duquesne Slag Company between the years 1951 and 1953?

MR. CASEY: Objected to as immaterial.

THE COURT: Objection overruled.

A. We have a working agreement with the slag company that they purchase all our output.

Q. That who purchases all your output?

A. Duquesne Slag.

Q. What is this output that they purchase all of it?

A. Sand and gravel.

Q. Now, do you have records which were subpoenaed by the Government pursuant to a subpoena duces tecum?

A. Yes, sir.

Q. May I have those records, please?

(Accounts receivable of Duquesne Sand 1951-1953, marked Government's Exhibit No. 13.)

(Vouchers backing up ledger sheets, accounts

receivable, marked Government's Exhibit No. 14.

(Pencil record showing payments for sand delivered by Duquesne Sand marked Government's Exhibit No. 15.)

(Record of location of barges owned by Crain Brothers and record showing location of barges owned by Duquesne Sand marked Government's Exhibit No. 16.)

(Record of barges delivered to Belle Vernon by Crain Brothers marked Government's Exhibit No. 17.)

Q. I show you Government's Exhibit No. 13 marked for identification and ask you to tell me what that is?

A. That's our accounts receivable of the Duquesne Sand Company for the years 1951 through 1953.

Q. Are these accounts receivable kept under your custody and control?

A. Yes, sir.

Q. I show you Government's Exhibit 14 marked for identification and ask you to tell me what that is?

A. These are the vouchers that back up the ledger sheets, accounts receivable.

MR. CASEY: Do I understand that to back up?

MR. PALETTA: Back up these ledger sheets.

Q. Those records, they represent, Mr. Crain, do those records represent '51 through '53, do they not?

A. That's right.

Q. '51 to '53.

MR. PALETTA: May it please the Court, I move that Government's Exhibit 13 marked for identification, accounts receivable ledger of Duquesne Sand Company, be admitted into evidence.

MR. CASEY: I would only ask the purpose of the offer.

MR. PALETTA: To show sales of sand from Duquesne Sand Company to Duquesne Slag Company.

MR. CASEY: I object to that and to the offer as being immaterial and irrelevant.

MR. PALETTA: Your Honor, we are going to have to show the sand was dredged by the "Admiral", transported by Crain Brothers for Duquesne Sand Company, sold by Duquesne Sand Company to Duquesne Slag, by which it was sold to Mr. Rider and Mr. Rider sold it to Ragnar Benson and Ragnar Benson used it in the concrete with which they built the Allenport plant. It's that chain of interstate commerce.

MR. CASEY: I didn't think you were introducing it as part of the chain.

MR. PALETTA: It's part of the chain, one link at a time.

MR. CASEY: I still object to this link.

THE COURT: You still object?

MR. CASEY: I certainly do.

THE COURT: Objection is overruled.

MR. PALETTA: I move Government's Exhibit 14, invoices of sales of Duquesne Sand Products to Duquesne Slag Products be admitted into evidence.

MR. CASEY: May I interpose the same objection?

THE COURT: They will be admitted.

Q. I show you Government's Exhibit 14, Mr. Crain, tell me now, would you check through there and tell me whether '51, '52 and '53 sales of Duquesne Sand Company to Duquesne Slag are represented therein?

A. Apparently they only have '53 here.

BY MR. CASEY:

Q. Apparently you only have '53, is that it?

A. Yes.

BY MR. PALETTA.

Q. Only one year, '53. Do you have the similar invoices for '51 and '52, Mr. Crain?

A. Yes, sir.

Q. Following the Court recess, will you obtain those for me, please?

A. Yes, sir.

Q. Now, I show you Government's Exhibit No. 13. Would you tell me what that is?

A. That is our accounts receivable for the Duquesne Sand Company for the years '51, '52 and '53.

Q. Now, does this show sales of sand to various customers?

A. It doesn't show it on this record. This shows the income, nothing else.

Q. Was this income that is shown on these records, what is this income for, what has Duquesne Sand Company done to warrant this income coming into Duquesne Slag Company?

A. About 95 per cent of the income of the sand company is sale of sand and gravel.

Q. Were these records prepared under your direction and control?

A. Yes, sir.

Q. So would you say a majority of the income shown there is for sales of sand by Duquesne Sand to Duquesne Slag Company?

A. I'd say 95 per cent is sale of sand and gravel.

Q. Now, I show you Government's Exhibit 14, invoices for 1953 of Duquesne Slag Company. Now, will you look at Government's Exhibit 13 and in conjunction with Government's Exhibit 14, tell me whether or not there were sales of sand in the year 1953 from Duquesne Sand Company to Duquesne Slag Company giving the date on the ledger sheets and match them up with invoices showing the actual sale of sand? Would you further tell

me the name of the dredge that the invoice shows dredged that sand that they sold?

A. On the ledger, on November 19th it shows income from the Duquesne Slag Products Company.

BY MR. CASEY:

Q. What year is that?

A. '53, and here we have the vouchers to substantiate that.

BY MR. PALETTA:

Q. All right now, what was the amount of the income for that sale?

A. This particular one was $480.60.

Q. What was the thing that was sold by Duquesne Sand to Duquesne Slag?

A. On that particular one it was gravel delivered to Brady Street from our dredge "Admiral."

MR. CASEY: Well now, it's apparent that there's no gravel involved in this matter.

MR. PALETTA: That's right.

MR. CASEY: I'll withdraw that, I will not object.

MR. PALETTA: Mr. Casey, we have a lot of invoices there so we'll just keep going through. We'll find some sand.

MR. CASEY: I think it's like that stew, rabbit, one horse and one rabbit, 50-50 stew.

Q. Mr. Crain, if there is no sand shown on that particular invoice, would you start with January, '53, and pull out the invoices that show sale of sand, please, and continue pulling maybe two or three for each month.

A. Well, on November the 30th of the same month, we have a whole list of sand barges.

Q. A whole list of sand barges. Now, what was the amount of the sale on this particular invoice?

A. That was $14,293.01.

Q. And did this $14,000 represent a sale of sand from Duquesne Sand to Duquesne Slag?

A. Yes, sir.

Q. Where does the invoice - strike that question. What is the name of the dredge boat that dredged the sand that the invoice shows was sold?

A. Dredge "Admiral."

Q. Let me ask you this question at this time: During the years '51, '52 and '53, Mr. Crain, did Duquesne Sand Company own more than one sand dredge boat?

A. No, sir.

Q. Did you only own one sand dredge boat?

A. Yes, sir.

Q. What was the name of that boat?

A. "Admiral."

Q. Now, would you start from the beginning, in January perhaps, and pick out one or two and just sort of run through the year, one each month for the twelve months of the year? Could you do that without much trouble, showing sales of sand, giving the name of the dredge boat that the sand came from?

A. In January, we weren't in operation.

Q. All right, then go into February.

A. Well, in March we delivered sand to Brady Street from the dredge "Admiral."

MR. CASEY: Mr. Paletta, I take it we are idle in February too?

A. Yes, sir. We operated each month the rest of the year, each month we delivered sand.

Q. You did deliver sand each month the rest of the year?

A. Yes, sir.

Q. Sand was delivered to the Duquesne Slag Products Company?

A. Yes, sir.

Q. And each month, did that sand come from the dredge "Admiral," according to the invoice?

A. Yes, sir.

BY THE COURT:

Q. As I understand, that's each month excepting January and February, is that correct?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. That is for the year 1953?

A. Yes, sir.

BY MR. PALETTA:

Q. Mr. Crain, I show you Government's Exhibit 15 marked for identification. Would you please tell the Court what that is?

A. This is a record, a pencil record that my bookkeeper keeps to show that we are paid for each barge of sand that we deliver.

Q. Does that give the number of the barge, the actual barge number?

A. Yes, sir.

Q. I show you Government's Exhibit 16 marked for identification and ask you to tell me what that is?

A. Well, there's two records here. One is the record of the location of the barges that's owned by Crain Brothers and the other one is a record that shows the location of the barges owned by the Duquesne Sand Company.

Q. Does it show the movement—well, I don't want to ask any questions about it. I show you Government's Exhibit No. 17 marked for identification and ask you to tell me what that is?

A. This is a record of barges that were delivered to Belle Vernon by Crain Brothers.

MR. PALETTA: May it please the Court, I move that Government's Exhibit 15, a record of barges of Duquesne Sand Company, be admitted into evidence.

THE COURT: Have you seen this record?

MR. CASEY: Yes, I just saw it.

THE COURT: Do you have any objection?

MR. CASEY: I have the same objection, presuming it's being offered for the same purpose, as the same link or another link in the chain of interstate commerce. I make the same objection.

MR. PALETTA: Your Honor, I think it's a link.

THE COURT: Objection overruled. Exhibit 15 will be admitted.

MR. PALETTA: I move that Government's Exhibit 16, marked for identification, a record of movement of barges of Duquesne Sand Company, be admitted into evidence.

THE COURT: Exhibit 16 will be admitted.

MR. CASEY: I have my same objection to that.

THE COURT: Objection overruled.

MR. PALETTA: I move that Government's Exhibit 17, a summary of barge movement to Belle Vernon of Crain Brothers and Duquesne Sand Company be admitted into evidence.

MR. CASEY: The objection as to Exhibit 16 will cover that.

THE COURT: Objection overruled and Exhibit 17 will be admitted.

Q. Now, I show you Government's Exhibit 15, Mr. Crain, and tell me, what is the function of this book?

A. The clerk keeps this record. When we invoice the customer, you can see he draws a circle around the number of the barge. That shows it's been invoiced and we will be paid for it.

Q. Does this record here show barges delivered to the Duquesne Slag Company by Duquesne Company and Crain Brothers for the years '51, '52 and '53?

A. Yes, sir.

Q. Would you turn to that particular section? Does this show barges which went to the Belle Vernon plant of Duquesne Slag Company?

A. Yes, sir.

Q. Could you read the numbers of some of the barges and the dates from that record that went to the Duquesne Slag Company at Belle Vernon?

A. Well, here's November, 1953, it shows digger to Brady Street to Belle Vernon. It shows Barge 205, 206, 211, 214, 215, 66, 326, 2, 442, and 207.

Q. Mr. Crain, I am going to give you Government's Exhibits 15, 16 and 17. I am going to ask you if you can pick out barges by number and show the movement of those barges from the dredge "Admiral" to Belle Vernon on about one day for each month during those three years or at least pick out about three per year. Then we will see if we need more.

MR. CASEY: Pick out January and February of '53.

MR. PALETTA: We might not be able to pick those.

Q. Can you pick January and February? If not, go into March and April?

A. We might have delivered a barge in those months, although we weren't digging sand.

Q. That's a good idea. Do check January and February of 1953. Let's see if you did deliver any barges and tell me where the barge came from.

A. In January, 1953 apparently we didn't have many movements.

Q. Is there no movement at all?

A. Yes, there's some movements but it's not—might have been sand or gravel. Barge 112, barge 112 was in the slag trade.

Q. Is that the only barge that moved in that month?

A. No, there was some other movement but they were slag.

Q. How about February, 1953?

A. In February in 1953 a barge 212 was loaded with sand, it was taken to Belle Vernon.

Q. Where was it loaded with sand?

A. It was stored at Leetsdale apparently.

Q. Where is that?

A. That's a landing we have at Leetsdale.

Q. What state?

A. That's in Pennsylvania.

Q. How did the sand get to Leetsdale, does it show?

A. 212. I will go back in January. That barge was brought to Leetsdale in December, 1952.

Q. From where?

A. From our dredge "Admiral."

Q. From your dredge "Admiral." Can you tell from that where your dredge "Admiral" was?

A. No, sir.

Q. All right, let's start chronologically. Let's go to January, let's go to October of '51. I will follow you on my Government Exhibit 15.

A. There's a whole lot of barges here.

Q. Just pick out one with sand. Are you familiar with the numbers? Tell me, can you tell me from looking at a number whether it was a slag or sand barge?

A. Usually, yes.

Q. Let's see you be a genius enough to pick out your sand barges?

A. The only barge 202 in October, it showed at the digger on the 1st of October. Our "Steel City" picked it up and brought it to Brady Street.

Q. Now, when you use the word "digger", stop for a minute. You said that the barge picked it up from your digger. Always give the name of the digger.

A. Dredge "Admiral."

Q. All right, then what happened, it was picked up from the digger "Admiral" and then what happened?

A. Our motor vessel "Steel City" picked it up and delivered it to Brady Street.

Q. What happened to it from Brady Street?

A. The "Steel City" returned it to the digger on the 5th.

MR. CASEY: May I ask a question?

MR. PALETTA: Sure.

BY MR. CASEY:

Q. Returned it empty?

A. Yes, sir. Then it made the cycle twice again that same month. Barges 201, 202, 203, clear on down the line were in the sand trade that month.

MR. PALETTA:

Q. All right now, let's go to November. Can you pick up Barge 207? November of '51.

A. Yes, sir.

Q. Did Barge 207 pick up sand from the dredge "Admiral"?

A. Yes, sir.

Q. What happened to that sand?

A. Well, that was delivered, our motor vessel "Hoopes" delivered that to Belle Vernon on the 12th of the month.

Q. To whom was that delivered at Belle Vernon?

A. I don't know. The Duquesne Slag dock at Belle Vernon?

Q. To the Duquesne Slag dock at Belle Vernon?

A. That's the way we determine it.

Q. How about Barge 208 on November 21, 1951. Could you trace that history?

MR. CASEY: What was the number of that?

MR. PALETTA: Barge 208.

A. Barge 208 was delivered by the motor vessel "John J. Hoopes."

Q. Where was it picked up?

A. That was picked up at Brady Street.

Q. Just a second, let me coordinate one more record.

A. And it was brought to Brady Street from our dredge "Admiral."

Q. Didn't Barge 208 go from the digger to Belle Vernon, November 21st?

A. It stopped at Brady Street. We delivered it to Brady Street. Then Duquesne Slag Company take it to Belle Vernon.

Q. So the ultimate destination was Belle Vernon, isn't that correct?

A. Yes, sir.

Q. Now, let's go to December of 1951. Let's pick up Barge 207 again. In December of '51, would you give the history of that barge?

A. On the first day the barge records show the barge in movement in the tow of our motor vessel "Steel City."

Q. Wait, before it started moving, what did it do, did it pick up sand?

A. I have to look in November to see that. It shows that it loaded the sand.

Q. From what?

A. Well, this November record, December record, this first day just shows it didn't move.

Q. Go to the November record and tell me what it was loaded with and from what?

A. On the last day of November, it was loaded with sand at our dredge "Admiral."

Q. Now trace its history through.

A. On the 1st of December it was in the tow of "Steel City," on the 2nd, it arrived at Brady Street; on the 3rd, "Steel City" took it back to the digger, arrived there on the 4th, Dredge "Admiral."

Q. Wait a minute.

BY MR. CASEY:

Q. Does that same thing apply to the fact the digger loaded there empty?

A. It went back empty.

BY MR. PALETTA:

Q. Just a second. Didn't Barge 207 on December 28th, wasn't that brought to Belle Vernon?

A. On December 28th—On December 28th our motor vessel "Hoopes" put the barge into Belle Vernon.

Q. That's right, and then it went back empty, isn't that correct?

A. Well, previous to that in the month of December, it made four or five trips to the digger.

BY MR. CASEY:

Q. I got lost on one of those trips some place. We are back now to December 28th, is that right? You are talking about December 1st?

A. On December 1st the barge was on its way up from our dredge "Admiral" and before the December 28th, it had been loaded and emptied several times.

* * * * * *

Q. Now, to how many customers did the Duquesne Sand Company sell sand during the years '51, '52 and '53?

A. The only customer we ever sold any sand to is Duquesne Slag at all times.

Q. Did Duquesne Slag purchase your whole output of sand then?

A. They have ever since the sand company was organized.

Q. Is there any inter-connecting ownership between Duquesne Sand Company and Duquesne Slag Company?

A. Duquesne Slag Company owns stock in the Duquesne Sand Company.

Q. In what percentage?

A. They own 49 per cent.

Q. Is Crain Brothers in any way connected with Duquesne Sand or Duquesne Slag?

A. Crain Brothers own 51 per cent of the Duquesne Sand Company. We have no connections with the slag company.

* * * * * * * *

CHARLES D. MYERS, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. PALETTA:

Q. Would you give your full name?

A. Charles D. Myers.

Q. What is your occupation?

A. Secretary-treasurer of Duquesne Slag products Company.

Q. How long have you been with the Duquesne Slag Products Company?

A. Since 1950.

Q. Did Duquesne Slag Products Company during the years 1951, '52, '53 sell sand to William Rider of Rider Supply Company?

A. Yes, sir.

Q. From whom did you purchase the sand that you sold to the Rider Supply Company?

MR. CASEY: If the Court please, I object to any testimony of this witness relating to sales of sand to William Rider or any other person on grounds of immateriality and non-relevancy.

MR. PALETTA: We are forging the next link in the chain. Of course, it's relevant to show the dredge "Admiral" dredged it, Crain Brothers transported it, Duquesne sold it to Duquesne Slag. Now Duquesne Slag is going to sell it to Mr. Rider, Mr. Rider is going to put it into concrete and sell it to Ragnar Benson, Benson is going to build the plant,

the plant is going to manufacture steel bands, and the steel bands go to Detroit.

MR. CASEY: I say this is the same thing if this is a link in the chain. It probably came from Chicago. I defy Mr. Paletta or anyone to tell me it's still in interstate commerce. That's precisely my objection. It's come to rest some place. I object to it that it's immaterial in this issue.

MR. TEITELBAUM: That's the same issue, Your Honor, raised by Willie Bioff on the movie proposition.

MR. CASEY: This is Vincent Casey raises this one.

MR. TEITELBAUM: The Court answered it where films were sent to an exhibitor, to a distributor in an area and from the distributor they were sent out to the local movies for exhibition and Willie Bioff extorted money from a local theatre owner and he said oh, interstate commerce stopped when it got to the distributor, and the Court says yes, it wouldn't have gotten to the distributor if nobody was able was going to be able to exhibit it, if you interfere with the exhibitor, you are interfering indirectly then with the distribution to that distributor and the Congress has decided that any interference in any way is a violation of this Act. There might be a different ruling as to the National Labor Relations Act or the Wage and Hour Act, but as far as this Act is concerned, they said any interference in any way—

MR. CASEY: That's a very fine speech. All I ask is that my objection based upon—

THE COURT: Objection overruled.

Q. Would you answer the question? Did you sell sand to the Rider Supply Company?

A. Yes.

Q. I didn't hear your answer. I am sure the jury didn't.

A. During the years 1951 to 1953, yes.

Q. You sold that sand and from whom did you purchase that sand that you sold to the Rider Supply Company?

A. That's a question that is quite difficult to answer, but we purchase sand from Duquesne Sand and also purchase from other suppliers.

Q. All right, let's break that down. What percentage of the sand that you sold did you purchase from Duquesne Sand Company?

A. Would you repeat that question again also?

Q. (question read.)

A. Sold to who?

Q. To all your customers?

A. I would say better than 90 per cent was purchased from Duquesne Sand Company.

Q. And the remaining 8 per cent or so was purchased from whom?

MR. CASEY: What do you mean? I thought he said 90 per cent.

Q. All right, you purchased over 90 per cent, you say, from the Duquesne Sand Company. From whom did you purchase the remainder of your sand?

A. We also purchase sand from Shippingport Sand and Gravel Company, located at Shippingport, Pennsylvania. That sand is dug from the ground, not from the river. We also purchase sand from other suppliers, Iron City Sand and Gravel, which more or less is a minority quantity.

Q. Can you state how the sand that you sold to Mr. Rider of Rider Supply Company was delivered by you to him?

MR. CASEY: When?

Q. During the year '51, '52 and '53?

A. That material was delivered in most instances by barge from our Brady Street yard.

Q. Do you know the company that owned the barges? Whose barges were they that sold this, that transported this sand that you sold to Rider Supply at Belle Vernon?

A. A barge is a number to me. I don't know who owned those barges. I presume it is—

Q. Fine, we will get into some of the numbers here.

MR. PALETTA: I might say, Your Honor, I plan at this time to have the various exhibits marked and identified. If the Court wishes to do this at this time or at recess, all the various documents.

THE COURT: It's going to be a much better record if you will have your exhibits marked before you use them.

(Agreement dated August 6, 1951 between Duquesne Slag Products Company and Rider Supply Company marked Government's Exhibit No. 18.)

(Ledger sheets, Duquesne Slag Products Company record, accounts payable to Duquesne Sand Company marked Government's Exhibit No. 19.)

MR. CASEY: If the Court please, at this point, it is the position of the defendant that the interstate commerce in this matter ceased when the Duquesne Slag Products Company took possession and title and assumed the responsibility for this sand involved, and I therefore object to any—

THE COURT: Do you have any authority for that position, Mr. Casey?

MR. CASEY: I haven't, not at the present time. That's my position as far as this standpoint, is that interstate commerce ceased and as far as this sand is concerned, under the proof thus far, it is not involved in the indictment being tried here. I'd like a continuing objection to the testimony of this witness relating to any sand that was sold to Mr. Rider.

THE COURT: The objection is overruled and it will be with the understanding that this testimony is subject to your objection.

(Duquesne Slag Products Company's copies of Crain Brothers' files of towing charges, for years 1951, 1952 and 1953 marked Government's Exhibit No. 20.)

(Invoices from Duquesne Sand in vouchers for years 1951, 1952 and 1953, involving charges in delivery of material to Rider Supply Company marked Government's Exhibit No. 21.)

MR. CASEY: This isn't a private conversation, is it, Mr. Paletta?

MR. PALETTA: I am asking—

MR. CASEY: If the Court please, I can watch one of them at a time. I can't watch both of them.

THE COURT: Wait a minute.

MR. CASEY: I am objecting—

THE COURT: Whatever you have to say, go ahead and say it.

MR. CASEY: I am objecting to the side remarks on Mr. Teitelbaum's part, when I am addressing my remarks to the trial lawyer, Mr. Paletta. He is making side remarks here to me and I am addressing them some place else. I can't be watching him.

THE COURT: Mr. Teitelbaum, suppose you wait. If you have anything to say to Mr. Casey you wait until he finishes his remarks to Mr. Paletta. Let's have no more of this nonsense. Get on with the trial of the case.

MR. CASEY: You mean nonsense, — If the Court please, I addressed, I asked Mr. Paletta, he was having a private conversation—

THE COURT: I have instructed them what to do. They are not to speak to you when you are addressing Mr. Paletta. You are absolutely right.

You shouldn't be annoyed by somebody else saying something to you.

(Accounts receivable ledger cards, Duquesne Slag Products Company against Rider Supply Company for years '51 to '54 inclusive marked Government's Exhibit No 22.)

(Copies of Duquesne Slag Products Company invoices against Rider Supply Company for years '51, '52 and '53 marked Government's Exhibit No. 23.)

Q. During the break I asked you in private, how did Shippingport Sand Company deliver the sand that they sold to Duquesne Slag Company? What was your answer to that question?

A. By barge.

Q. Where was this sand delivered that the barges delivered from Shippingport Sand Company to Duquesne Slag Company?

A. That could be to any of our customers including [illegible] Street yard.

Q. I show you Government's Exhibit 18 marked for identification and ask you to tell me what that is?

A. Photostat copy of an agreement dated August 6, 1951, between Duquesne Slag Products Company and Rider Supply Company.

Q. I show you Government's Exhibit 19 marked for identification and ask you to tell me what that is?

A. It's Duquesne Slag Products Company record, accounts payable record to Duquesne Sand Company.

Q. I show you Government's Exhibit No. 20 and sk you to tell me what that is?

A. Duquesne Slag Products Company's copies of Crain Brothers files of mostly towing charges for the year '51, '52 and '53.

Q. I show you Government's Exhibit 21 marked for identification and ask you to tell me what that is?

A. These represent invoices from Duquesne Sand Company in vouchers for the years '51, '52 and '53 involving charges in delivery of material to Rider Supply Company.

Q. I show your Government's Exhibit 22 marked for identification and ask you to tell me what that is?

A. Duquesne Slag Products Company, accounts receivable ledger cards against Rider Supply Company for the years '51 to '54 inclusive.

BY MR. CASEY:

Q. Do I understand that those are Duquesne Slag's cards?

A. That's right, accounts receivable cards.

BY MR. PALETTA:

Q. I show you Government's Exhibit 23 marked for identification and ask you to tell me what that is?

A. These are copies of Duquesne Slag Products Company's invoices against Rider Supply Company for the years '51, '52 and '53.

THE COURT: Mr. Paletta and Mr. Casey, since there are quite a number of exhibits there, we will adjourn for lunch at this time, and those exhibits can be examined before two o'clock.

(At this time, a recess was taken until 2:00 p.m.)

AFTERNOON SESSION 2:00 p.m.

CHARLES D. MYERS resumed the stand.

MR. PALETTA: Your Honor, I have Government's Exhibit 18 marked for identification. It's a contract between Duquesne Slag Products Company and the Rider Supply Company. What it is is actually a photostatic copy of the original and I have shown it to Mr. Casey and assured him that it is a copy of the original and he has no objection to it going in. He will allow it to go in and he won't require us to produce the original so I move Government's Exhibit 18 for identification be admitted into evidence.

THE COURT: Has it been identified?

MR. PALETTA: Yes, Your Honor.

MR. CASEY: No objection.

THE COURT: Exhibit No. 18 will be admitted.

MR. PALETTA: I move that Government's Exhibit 19 marked for identification, accounts payable of the Duquesne Slag Products Company, ledger cards, be admitted into evidence.

THE COURT: Have you seen that, Mr. Casey?

MR. CASEY: Yes, I saw them during the recess.

THE COURT: All right, Exhibit 19 will be admitted.

MR. PALETTA: I move that Government's Exhibit 20 marked for identification, invoices showing — would that be payments to Crain Brothers, Mr. Myers?

A. That's right.

MR. PALETTA: — invoice showing payment to Crain Brothers to be admitted into evidence.

THE COURT: Exhibit No. 20 will be admitted.

MR. PALETTA: I move that Government's Exhibit 21 marked for identification, accounts payable vouchers of Duquesne Slag Products Company and documents attached thereto be admitted into evidence.

THE COURT: Exhibit No. 21 will be admitted.

MR. CASEY: Just one moment, please. Is that Duquesne Slag Company or Duquesne Sand Company?

MR. PALETTA: These are the accounts payable vouchers of Duquesne Slag Products. However, the vendor is Duquesne Sand. In other words, this is what they owe Duquesne Sand Company, the bills that they owe.

I move that Government's Exhibit 21 for identification be admitted.

THE COURT: Exhibit 21 will be admitted.

Direct Examination (Cont'd)

BY MR. PALETTA:

Q. Mr. Myers, did you say that these are the originals of the pink copies which were admitted into evidence through Clifford Craine, invoices which Mr. Crain had? They are in evidence as Government's Exhibit 14. These are the originals, actually, of Government's Exhibit 14.

MR. PALETTA: I move that Government's Exhibit 22, accounts receivable ledger cards of Duquesne Slag Products Company be admitted into evidence.

THE COURT: Exhibit 22 will be admitted.

MR. PALETTA: I move that Government's Exhibit 23 marked for identification, invoices, Rider Supply Company invoices, be admitted into evidence.

THE COURT: Exhibit 23 will be admitted.

Q. Mr. Myers, I show you Government's Exhibit 18 and ask you on the basis of that document, can you tell me that was the provision between Duquesne Slag Products Company and Rider Supply Company concerning Rider Supply Company's requirements on purchase of sand?

A. Paragraph 8, page 7 reads: "It is understood that Duquesne expects to procure any river sand hereinunder from either Duquesne Sand Company and or Shippingport Sand and Gravel Company only and that delivery will be made to Rider in barges. Duquesne shall be under no liability whatever to Rider for any failure to fill any order for river sand or for any delay in delivery thereof, if such failure or delay is due to inability to procure delivery of sufficient river sand by barge from either Duquesne Sand Company and or Shippingport Sand and Gravel Company or to Acts of God, acts of

Rider, fires, floods, high water, acts of civil or military authority, strikes, storms, accidents, wrecks, shut-downs or any cause beyond Duquesne's reasonable control."

Q. Thank you, Mr. Myers. Now I show you Government's Exhibit 19, the accounts payable ledger cards of your company. Would you just exactly tell me what are these cards, what is their function in the bookkeeping system of your company?

A. When invoices are received from vendors, they are charged to an inventory account and credited to accounts payable. These cards represent accounts payable ledger cards, a credit balance represents the payable and the charge represents the payment of this payable.

Q. Now, what Government exhibit in evidence is the invoice which this card represents? Would that be Government's Exhibit 21 here?

A. Yes, that's right, Government's Exhibit 21.

Q. Do these ledger cards, Government's Exhibit 19, show all purchases from Duquesne Sand Company during the years '51, '52 and '53 regarding sand?

A. I will qualify that by saying all sand purchased and sold to Rider Supply Company.

Q. I see. In other words, these ledger cards only represent sand purchased from Duquesne Sand and sold to Rider Supply Company?

MR. CASEY: He didn't say that.

A. No, no.

Q. Repeat that again. I didn't understand you then.

A. These vouchers that I have in my possession—

Q. I am asking you about the ledger cards, not the vouchers, Government's Exhibit 19?

A. Government Exhibit 19 shows complete purchases from Duquesne Sand Company.

Q. The voucher?

A. The vouchers substantiating these credits only

for sand purchased from Duquesne Sand Company and sold to Rider. In other words, these are not all vouchers for all sand purchased from Duquesne Sand.

Q. Now, I show you Government's Exhibit 21 and you say that am I correct in saying that Government's Exhibit 21, the vouchers back up what is on the ledger cards?

A. In part.

Q. In part.

A. That's right.

Q. Now, do these vouchers show the method of delivery of sand by Duquesne Slag Products Company to Rider Supply Company?

A. They do, yes.

Q. Now, would you tell us what the method of delivery was?

A. By barge

Q. Would you explain to this Court and jury how these vouchers show the delivery was by barge?

A. Taking a voucher at random, invoice dated September 12th of Duquesne Sand Company lists—

MR. CASEY: The year.

Q. The year, please?

A. September 12, 1952, lists five barges delivered to Duquesne Slag Products Company, Brady Street yard, from dredge "Admiral". Two of these barges are reconsigned as noted on the invoice to Rider Supply Company.

Q. To Rider Supply Company?

A. That's correct.

Q. Now is the actual number of the barge reconsigned to Rider Supply Company given on that voucher?

A. Yes, it is.

Q. Would you just read those two barge numbers?

A. Barge No. D.S. 212, Barge No. 436.

Q. Without the necessity of going through all these

vouchers, do these vouchers right here represent the years '51, '52 and '53?

A. That's correct.

Q. For all years '51, '52 and '53, do these vouchers show barge numbers, said barges containing sand from the dredge "Admiral" and said barge being purchased by Duquesne Slag for consignment to Rider Supply Company?

A. That's correct.

Q. Now, Mr. Myers, I think that is sufficient on that point. I show you Government's Exhibit 22. Would you tell me what that exhibit is and explain its function?

A. Exhibit 22 shows detailed charges against Rider Supply Company for purchases by Rider Supply Company, also credits which include allowances or cash received.

Q. Would Government's Exhibit 23 which I show you here, invoices of Rider Supply Company, would these sales which are shown on these invoices also be noted on these ledger cards?

A. That is correct.

Q. And these invoices, Government's Exhibit 23 contain therein numbers of barges carrying sand which was sold to Rider Supply Company?

A. That is correct.

Q. Would the barge numbers in these invoices tie in with the numbers shown in these vouchers of sand purchased by Duquesne Slag from Duquesne Sand Company?

A. That is correct.

Q. Now, would you just turn to that same month? What was that did you turn to the last time, September — you turned to a month in 1952. Turn to that same month and illustrate how that same barge number is shown therein?

A. Invoice dated September 23, 1952, No. 33, contains two barge numbers, D.S. 212 and 436, also included in that invoice are three other barges delivered to Rider Supply Company at Belle Vernon.

Q. Are those two barge numbers that you first mentioned, are those the same two barges that Duquesne Slag purchased from Duquesne Sand?

A. That is correct.

Q. Those are the same two that were transported by Crain Brothers?

A. That is correct.

Q. And which contain sand dredged from the dredge "Admiral" according to the records?

A. That is correct.

Q. All right, that's all I have, Mr. Myers. Oh, one other question. Is that true for the years '51, '52 and '53 regarding these invoices here?

A. That's correct.

Cross Examination

BY MR. CASEY:

* * * * * * * * *

Q. Isn't it a fact or do you know that that was the first time that barge shipments could come into that plant was on October 26th, 1951, prior to that time except for that one isolated barge, all the sand deliveries were made by rail?. Doesn't that exhibit show that?

A. That could be true. I am not difinite on that. There may be some reason for it, could be the water was high or the dock was not dredged; might be some reason.

Q. Or the orders had been out to put it on the rail, contract?

A. Or possibly a hoist of some kind was missing or something to that effect.

Q. During that time—

A. This is our expense when we delivered this by railroad car, it was our expense, so you can see it would be very expetsive for us to continue delivering by railroad car.

Q. I notice on those things you didn't break down the transportation?

A. No, sir.

Q. From wherever it went?

A. No, sir. We would lose a ferrific amount of money. I don't know what the freight rate was at that time.

Q. Along that line, if you know now, with regard to those railroad cars, whose duty was it to unload those railroad cars?

A. I would think it would be Rider Supply Company because they were consigned to Rider Supply Company.

Q. In any event, between the August the 7th, 1951 and October the 26th, 1951, all of the sand deliveries in that period at least except that one barge were delivered by railroad, as far as that exhibit shows?

A. Yes, that is approximately correct, that is right.

Q. Well, the exhibit will speak for itself.

A. All right, sir.

* * * * * * * *

Q. Do you know, those railroads, goldola cars, deliveries of sand, do you know where that came from? The ones that came into the Belle Vernon plant?

A. They originated at Brady Street yard.

* * * * * * * *

WILLIAM G. RIDER, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. What is your name?
A. William G. Rider.
Q. Mr. Rider, how old are you, sir?
A. 48.
Q. Married?
A. Yes.
Q. Children?
A. Yes.
Q. How many?
A. One.
Q. Back in 1951 and specifically around September of 1951, in what were you engaged?
A. Ready-mixed concrete.
Q. And under what name did you operate?
A. Rider Supply Company.
Q. That was your business name?
A. That's right.

BY THE COURT:

Q. Wait, let's get the microphone a little closer. You operated under the name of?
A. Rider Supply Company.

BY MR. TEITELBAUM:

Q. How long had you been in business as the Rider Supply Company?
A. I started in 1950.
Q. Prior to that, had you been in any other business?
A. In the contracting business.
Q. Under what name did you operate?
A. Rider Construction Company.
Q. Were either of these companies corporations?
A. No.
Q. Who owned those companies?
A. I did.

Q. Singly or different partners?

A. No, I owned them singly.

Q. When did you start working as the Rider Construction Company?

A. Back in 1941 I went in business.

Q. Prior to 1941, Mr. Rider, had you been in any business?

A. No.

Q. Did you ever operate another enterprise known as the Rider Coal Company?

A. I operated the Rider Coal Company in 1941 too.

Q. How long did you continue to do some coal mining under the name of Rider Coal Company?

A. I operated up to 1945 or '46, then stopped, then operated in 1948, something along in there.

Q. How long were you in business in the construction business?

A. From 1941 to 1951. Then I stopped and I did a state job in 1954.

Q. You continued to be engaged, your last job you said was in 1954?

A. '54.

Q. Did the Rider Construction Company employ any help, labor?

A. Oh yes.

Q. Did you employ anybody that was a member of the International Hod Carriers, Building and Common Laborers Union of America?

A. Yes.

Q. About how many of those men would you employ, Mr. Rider?

A. Sometimes we'd have 20, sometimes we'd have more.

BY THE COURT:

Q. This is while you were operating as the Rider Construction Company?

A. Construction Company.

MR. CASEY: That was in 1954, as I understand.

Q. Now, the Rider Construction Company, as I understand your testimony, you operated from 1941 to 1950?

A. Yes, that's right.

BY MR. TEITELBAUM:

Q. Then you said you took on another job in 1954?

A. 1954 I took on another job.

BY THE COURT:

Q. Now wait, let's get this straight. Then the Rider Supply Company you operated from 1952 to 1954?

A. 1955

Q. Did you do any work for the state in 1954?

A. Yes.

Q. Will you tell us as the Rider Coal Company just what you did? Incidentally was that a corporation or single enterprise?

A. No, that was a company.

Q. A company?

A. That's right.

Q. Did you have partners?

A. Yes.

Q. Who were your partners?

A. My mother.

Q. Your mother?

A. That's right.

Q. Were you mining your mother's land?

A. That's right, some of it.

Q. Where was that, that you did that mining?

A. Charleroi, Pa.

Q. And then when you went into business as the Rider Construction Company, what sort of work did the Rider Construction Company do?

A. We started out at doing driveways and then we

got a job in Pittsburgh Steel doing small jobs, foundations, and we gradually kept bidding. We bid street jobs. From there on, we went into the state highway work and also built a dam for the Forests and Waters.

BY MR. TEITELBAUM:

Q. How did you determine how much you were to Pay these members of the Common Laborer's Union you employed?

A. I belonged to the Contractors' Association.

Q. Is that the one Mr. Tejan has?

A. That's right.

Q. How would you get your wage schedules and rates?

A. By the small books that were sent out to us.

Q. From the Construction Council?

A. That's correct.

Q. In addition to members of the Common Laborers' Union, did you employ any other union people in the construction company?

A. I don't get you.

Q. Did you employ any members of any other unions than the Common Laborers Union?

A. No.

Q. Just common laborers?

A. That's right. Oh, the operator engineers and—yes, the operator engineers and the carpenters, all that goes under Constructors Association.

Q. Did you get all of their wage rates from the same source?

A. That's right.

Q. When you needed employees in the construction company to work for you, how would you go about getting people?

A. They were generally hired from the local representative.

Q. The local representative of the union or what?

A. That's right, that's right.

Q. If you needed common laborers, you would go then to the local representative of the Common Laborers Union?

A. That's right.

Q. During the time up to 1950 when you were operating the Rider Construction Company and employing these common laborers, did you ever have occasion to meet the defendant, Nicholas Stirone?

A. No, I don't think I ever did.

Q. Had you ever had any discussions with him aside from maybe a cursory one that you don't remember?

A. No.

Q. I didn't get your answer?

A. No.

Q. Now in 1950 you tell us that you started the Rider Supply Company?

A. That's right.

Q. What was the business of the Rider Supply Company? What did you do?

A. The Rider Supply Company furnished concrete for the Pittsburgh Steel and also the domestic trade.

Q. When you say you furnished concrete for the Pittsburgh Steel, what was going on at Pittsburgh Steel that you furnished concrete for them?

A. Pittsburgh Steel at first were building the blooming mill.

Q. Where?

A. At Monessen and next—

Q. Wait—did they build it themselves or was there a general—

A. No, built by Eichleay Corporation. Next, it was built by Ragnar Benson. That was a strip and cold mill.

Q. The strip and the cold mill?

A. Yes, hot and cold.

Q. I want to go back to the time when you were dealing with the Eichleay Corporation. What did you supply the Eichleay Corporation for the blooming mill?

A. Ready-mixed concrete.

Q. How do you make ready-mixed concrete?

A. I was using slag, sand and cement.

Q. Did you use any gravel?

A. No.

Q. That's for the Eichleay people?

A. That's right.

Q. Where would you get your sand?

A. I bought the sand from Duquesne Supply Company.

Q. Where did you buy your gravel—excuse me,—your slag?

A. Duquesne Slag.

Q. Where would you buy your cement?

A. The cement came from Pittsburgh Coke and Chemical Company.

Q. And did you buy that directly from them or through the Duquesne Slag Company?

A. When we first started, when we first started the plant, I mean I had the contract for the Eichleay job. Mr. Dierker and I got together and he asked me why didn't I move up to their property and set up a plant.

Q. Who was Mr. Dierker?

A. Mr. Dierker was the president of Duquesne Slag Company.

Q. What did he ask you to do?

A. To move up to their plant and set up on their property.

Q. When was that?

A. That was in 1950.

Q. Up to that time—

A. I am pretty sure it was 1950.

Q. Up to that time, had you been buying any sand and slag from Mr. Dierker?

A. No.

Q. From Duquesne Slag?

A. No.

Q. Who had you buying it from up to that time?

A. I bought my sand—I wasn't in operation, I mean I hadn't bought any sand or slag for the Rider Supply Company at all.

Q. Then when you bid on the Eichleay job, then do I understand that Mr. Dierker suggested that you move into his premises?

A. That's right.

Q. What was on his premises?

A. At that time they had nothing there. They hadn't even—the only thing they had was a piece of vacant ground.

Q. There was no plant on it at all at that time?

A. No, they were moving in a portable plant.

Q. We have heard a lot about a batching plant. Will you tell us what a batching plant is, what you do there?

A. A batching plant is a cement bin, an aggregate bin, and your heating system and your water system. If you are buying off the river, you have to have a crane or a whirley sitting alongside of the river.

Q. Now, when you get this plant, will you tell us what it does now? What do you do with that batching plant?

A. What you do with the batching plant, you unload sand from the barges off the river to a stockpile, then you lift it from the river crane into your aggregate bin, your sand, then you go to another stockpile besides your bin and put your aggregate in.

Q. What is this aggregate?

A. That would be your slag. You have two different

sizes of slag. Then you have your cement bin. That is full of cement. You take your mixer trucks and you drive under your aggregate bin, each ingredient is weighed, so much per batch. It's the same way with cement. You drive from one bin to the other. You put your water in. Then you are on the road to your destination.

Q. In other words, those trucks mix it while they are going to the destination?

A. Not all the time. They have to wait sometimes until they get to the destination before the inspector allows them to mix because the mix is some time.

Q. When we see these things going along the road, these things revolving—

A. More than likely they are washing out. They generally wash out on the return.

Q. You say when you first agreed with Mr. Dierker, there was nothing on that plant—nothing on that ground up there at Belle Vernon, is that right, this piece of ground?

A. There was nothing there at all when we started to talk.

Q. Now, was there a dock there?

A. No.

Q. Did you make an agreement with Mr. Dierker that you would move up there?

A. After we got it made, yes, after we made the agreement that I'd move up, why then I moved the aggregate bin, my aggregate bin to Belle Vernon.

Q. In other words, the aggregate bin was yours?

A. That's right.

Q. Where had you had it?

A. I had it stored at North Charleroi at my plant.

Q. Prior to that time, had you made any ready-mixed concrete?

A. I had for state highway work, yes.

Q. Where did you make it?

A. Well, we dry batched it to a big mixer and then

used it, used it on the paving for highways.

Q. So you moved your aggregate bin up to North Charleroi, then you needed another kind of bin up there, didn't you?

A. Yes, we needed a cement bin and I didn't have a cement bin. Mr. Dierker told me he'd get the cement bin.

Q. Did Mr. Dierker put in a dock?

A. Yes.

Q. Did he put in a crane?

A. Half of one and I rebuilt it after he put it in.

Q. Where was that crane put up?

A. Oh, in Belle Vernon.

Q. Is that on the dock or does it move?

A. No it's on foundations.

Q. What purpose does the crane—

A. It swings halfway around.

Q. What did you do with that crane?

A. Unload sand out of the barges.

Q. The barges pull up and tie up at the dock and you use the crane to unload the sand?

A. That's right.

Q. Did you also use it to unload slag?

A. No.

Q. How did your slag arrive?

A. We picked it up in trucks at their crushing plant.

Q. Where was their crushing plant located?

A. That was about three or four hundred yards away from the plant.

Q. That was on the same piece of ground that you had the batching plant?

A. That's right.

Q. How did you pick up your sand?

A. From the barges with the crane.

Q. Now, Mr. Rider, did you have the operation of that crane?

A. Yes.

Q. Was any of the sand used in the crushing operation of Duquesne Slag Company? Did they need any sand within the making of slag?

A. No.

Q. What was the sand that was unloaded at Belle Vernon used for?

A. Used for ready-mixed concrete.

Q. Who used it for ready-mixed concrete?

A. Eichleay Corporation, Ragnar Benson and domestic trade.

Q. That is, you used it for them or did they use it directly themselves?

A. I used it directly myself.

Q. To make the products for them?

A. That's right.

Q. Was any sand docked in Belle Vernon and used for any other purpose except for your purposes in mixing ready-mixed concrete?

A. Yes, there was sand unloaded for Frank Mashuda Company.

Q. When was that?

A. I believe it was 1953.

Q. How about 1951 and 1952?

A. Could have been '52 and '53

Q. Who unloaded that sand?

A. I did.

Q. Do you know where that sand came from or who brought it in there?

A. That sand came from Duquesne Slag Company.

Q. That's the same place you got sand, is that right?

A. That's right.

Q. Was any sand used in those years for any other purposes that was unloaded there?

A. No.

Q. Were you ever personally present when those barges were unloaded at the dock?

A. Sometimes I was.

Q. Do you know of your own knowledge whose barges they were that were bringing the sand in?

A. Part of it was Duquesne's barges and part of them is Crane Brothers barges.

* * * * * * * * *

Q. Did you have an agreement with Mr. Dierker that you must buy all of your sand from the Duquesne Slag Company?

A. That's right.

Q. During the whole course of the time that you were delivering sand or delivering ready-mixed concrete to the Eichleay Corporation under your first contract, during that time had you ever met the defendant, Nicholas Stirone?

A. No, I had seen him before.

Q. But did you know him personally?

A. No.

Q. Had you ever had any discussion outside of maybe a cursory discussion?

A. No.

Q. During that time while you were at Eichleay Corporation, did you hear anything of any other contractor or any other prospect for selling ready-mixed concrete?

A. Yes, there was a job coming up at Allenport and practically everybody knew that there was a new blooming mill, our new strip mill, hot mill, going into Allenport and of course, through the papers and through the talk you get through the steel company, why you knew the thing was up for bid. Of course, we had some companies call us in for quotations too.

Q. What companies, the best you can recall, asked you for quotations?

A. Eichleay asked me for quotations, Ragnar Benson asked me for quotations.

Q. Did you make a quotation to Eichleay?

A. Yes.

Q. Did you make a quotation to Ragnar Benson?

A. Yes.

Q. At that time at the time you submitted a bid for the Eichleay Corporation and to Ragnar Benson Corporation for the ready-mixed concrete, did you know the defendant, Nicholas Stirone?

A. I knew of him.

Q. Had you ever met him?

A. No.

Q. Had you ever had any discussion with him?

A. No.

Q. Did you ask him to render any services for you?

A. No.

Q. Do you recall hearing who got that contract?

A. Yes, I heard that, of course I was watching for it because I wanted to get it and I heard that Ragnar Benson had got the contract.

Q. When you heard that; do you know what the date was that Ragnar Benson got that contract?

A. August the 29th.

Q. What year?

A. 1951.

Q. And what did you do when you heard Ragnar Benson got the contract, if anything?

A. I called Jacob Kassab.

Q. Who was Mr. Kassab?

A. He's vice president of Ragnar Benson Company.

Q. In talking to Mr Kassab, why did you call Mr. Kassab?

A. I called him to see how we stood on the contract.

Q. That is the bid you had already made?

A. That's right.

Q. Was that bid or proposal you had made oral or in writing?

A. Oral.

Q. It was done how?

A. Over the telephone.

Q. Did you ever meet Mr. Kassab?

A. I had met him once.

Q. Had you ever done business with Mr. Kassab?

A. No, I hadn't.

Q. Do you recall when you called Mr. Kassab, how long it was after Ragnar Benson got the contract?

A. How is that again?

* * * * * * * * *

Q. When did you call Mr. Kassab again?

A. You mean after the first time?

Q. Yes, after the time that you called him to submit a proposal, when did you next call him?

A. I called him right after, the next couple of days after the contract was awarded.

RICHARD C. WITT, a witness in behalf of the Government, having been previously sworn, was recalled and testified further as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. You will recall you were previously sworn?

A. Yes, sir.

Q. Also will you again state for the jury your name and position?

A. My name is Richard C. Witt. I am a buyer for the Pittsburgh Steel Company.

Q. You are in the purchasing department, is that correct?

A. That's correct.

Q. Now, Mr. Witt, you testified before as to the contract between the Ragnar Benson Company and the Pittsburgh Steel Company to build a certain plant known as the hot strip mill in Allenport, Pa. Do you recall that testimony?

A. Yes, sir.

Q. I show you now Government's Exhibit 8 which

is the purchase order of the Pittsburgh Steel Company? That's the one that you previously identified, is that correct?

A. Yes, sir.

Q. Would you state to the Court and jury the date on which that purchase order was given?

A. August 29, 1951.

Q. Now, Mr. Witt, would you explain to the Court and jury the function of the Board of Directors of the corporation in such a matter?

A. At some time previous to the time when a contract is to be let for any major program of the company or any major purchase, the Board of Directors at one of their regularly scheduled meetings, will appropriate a certain amount of money for the project that is contemplated.

Q. Let me interpose something in a question, Mr. Witt. At the time they appropriate the money for the erection of anything or for an expenditure, do they determine to whom that expenditure is to be made?

A. No, sir.

Q. So that when they met to appropriate the money for the erection of a hot strip mill at Allenport, Pa., did they at any time act on who the prime contractor was to be?

A. No, sir.

Q. Who determines the question as to whom the contract should be awarded?

A. Well, that is a management decision which is usually determined by the engineers and the purchasing department working together.

Q. What happens leading up to the awarding of that purchase order?

A. Well, the management—

BY THE COURT:

Q. Pardon me just a moment. May I look at that, Mr. Witt?

A. Yes, sir. Management decides that they have or when they receive information from the Board of Directors that their proposed new project has been approved as far as appropriation is concerned, they discuss with each other, the purchasing department and the engineers, the people in the plant, just what they want. I mean, they originally determine that they want a new hot strip mill and then after they have the appropriation and the greenlight, so as to speak, to go ahead on the project, they determine where they are going to put it and how big it's going to be and so forth and the minor details as to how many windows are going to be in it, and all such stuff as that. Then they ask for bids from various people who are in the business of erecting such a building or such a mill.

BY MR. TEITELBAUM:

Q. I show you Government's Exhibit 7 and ask you if that is such a bid?

A. Yes, sir.

Q. And whose bid was that?

A. That is from the Ragnar Benson Company.

Q. What was the date of that bid?

A. The date on this is July 30, 1951.

Q. Then will you tell us what happens after you receive the bids?

A. Well, they are usually tabulated. These are generally competitive bids and the people who submit the bids are informed as to whether or not they are bidding on the proper thing. I mean, somebody might be bidding on something that doesn't have anything to do with the program that the company has in mind. If the bid is in line with what we want, they are tabulated and the one who has the best bid, it's not necessarily the lowest in price, but in most cases it would be, is informed that he has received the contract.

Q. How is he informed that he has received the contract?

A. Usually by personal message, I mean telephone call. It might be that he is called up on the telephone or notified in some such manner to come up to our offices to the director of purchases office and he wants to discuss his proposal with him. When he arrives, if everything is—all the details have been worked out prior to this time, why he says, "Mr. X, you have been awarded the contract to build a new hot strip mill."

Q. When is the written purchase order prepared to be given to him?

A. Usually at that time or very shortly thereafter in the length of time that it takes the young lady who types up these orders to type it up. If the man was called in at say five o'clock in the afternoon and said that he had received the contract, he might not receive this document until the next morning, assuming that the typist has gone home for the evening. If he arrived at nine o'clock in the morning he might get it within the hour.

Q. Looking at the exhibit which you hold in your hand, which is Government's Exhibit No. 8, can you tell the Court and jury the earliest date on which the Ragnar Benson Company or anybody else could have known they were awarded this contract?

A. The earliest possible date from this document would be August 28th, the day before the date of this contract. It says in this contract that this contract was written for Ragnar Benson, quotation dated August 13th, revision August 28th. So there was some revision made on the 28th of August which could not have been incorporated in this contract at a time prior to August 28th, so August 28th would be the earliest possible date that anyone could have known that Ragnar Benson was going to receive the contract.

Q. When a contract of that scope is let, do you release that to the public?

A. Yes, sir.

Q. How is that done?

A. It's usually done by a press release through our

public relations department.

Q. Thank you, sir, you may cross examine.

WILLIAM G. RIDER, a witness in behalf of the Government, having been previously sworn, was recalled and testified further as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. Now, Mr. Rider, you recall you are still under oath?

A. Yes, sir.

Q. You testified yesterday that on some date prior to the awarding of the contract to Ragnar Benson they called you on the phone and that you had submitted by telephone a bid for ready-mixed concrete?

A. That's right.

Q. Did you then later call or contact Mr. Kassab again?

A. I contacted Mr. Kassab several days after he was awarded the contract.

Q. Why did you contact him then?

A. Well, I was after the contract. That's what I was after—work. I was after the job.

Q. What did you want to know from Mr. Kassab?

A. How I stood getting the contract.

* * * * * * * * *

Therefore I renew my objection to the testimony relating to the telephone call after the award of the contract to Ragnar Benson and ask it be stricken from the record.

THE COURT: Well, perhaps you wish to ask Mr. Rider how he heard this.

Q. At the time you called Mr. Kassab up, not the time you made the bid now, not the time you made the proposal; but the call that we are now talking about, why did you call him?

A. I called him to see about getting the contract for the concrete.

Q. What caused you to call him at that time?

A. Because it was in the paper. It was also all around the Valley that they had gotten the contract and even came out of the mill.

BY MR. CASEY:

Q. You say even came out of the mill?

A. That's right. It was well known in the mill that who got the contract and I was very close to it.

THE COURT: For the purpose of the record, in view of Mr. Rider's testimony, your motion to strike will be overruled

Q. When you talked to Mr. Kassab at that time, was he able to tell you anything about the awarding of the concrete contract for ready-mixed concrete?

A. No, he told me that he was still looking into it.

Q. When did you next see Mr. Kassab or talk with Mr. Kassab after that phone call?

A. I believe it was several days or a week afterwards, I called him again and wanted to make an appointment to come to Pittsburgh that day and he told me he was busy. I said, "Well, Jake, how about seeing you at home this evening? Are you going to be at home?" He told me yes, so my wife and I drove over to Mr. Kassab's house that evening.

Q. Where does Mr. Kassab live?

A. Cannonsburg.

Q. Where were you living at that time?

A. North Charleroi.

Q. You and your wife drove over there that evening?

A. That's right.

Q. Was Mr. Kassab at home?

A. Mr. Kassab was home. He was mowing the lawn or out doing something in the lawn.

Q. Did you have a conversation with him

A. Yes.

Q. Where was your wife while you had the conversation?

A. My wife was with Mrs. Kassab over in the dining room or sitting room.

Q. Where were you with Mr. Kassab?

A. In the den.

Q. Did Mr. Kassab state anything to you concerning the awarding of the contract?

A. Well, we talked about whether I was able to handle the job. I told him I was buying more equipment, more hauling equipment and I would be well equipped to handle the job because I was coming off the Eichleay job

Q. Did he say anything to you about who was going to get the contract?

A. As we left, he told me, "Bill, you have no worry, you have the contract."

Q. Mr. Rider, at the time you submitted your original proposal, had you ever talked to the defendant, Nicholas Stirone?

A. No.

Q. At the time you made your first phone call to Mr. Kassab after you heard he was awarded the contract, had you ever talked to the defendant, Nicholas Stirone?

A. No.

Q. Of course, I am referring to substantive conversation, not saying hello to him?

A. No.

Q. At the time you made your second call to Mr. Kassab and asked him for an appointment, had you ever met the defendant, Nicholas Stirone?

A. No.

Q. At the time you went to Mr. Kassab's house had you ever met the defendant, Nicholas Stirone?

A. No.

Q. Had you ever up to that time, either directly or

indirectly asked Mr. Stirone to give you any assistance in this matter?

A. No, I didn't.

Q. Was Mr. Stirone in the business of selling ready-mixed concrete?

A. I don't know.

MR. CASEY: I think that would be obvious.

MR. TEITELBAUM: Thank you, sir, that's my point.

Q. I show you Government's Exhibit No. 10 from the files of the Ragnar Benson Company and ask you if you recognize that document?

A. Yes.

Q. That's the purchase order from Ragnar Benson for the concrete, is that correct?

A. Yes.

Q. Would you read the date on which that purchase order is dated?

A. September the 25th.

Q. Now, Mr. Rider, Exhibit No. 10 is the formal purchase order, and you said that that was dated September 25, is that correct?

A. That's right.—Can I see that again, Mr. Teitelbaum?

Q. You look at the exhibit.

A. I want to see this again.

Q. What is the date on which you received the formal purchase order from Ragnar Benson for the ready-mixed concrete, the written purchase order?

A. September the 25th.

Q. What year?

A. 1951.

Q. Now, Mr. Rider, in your business is it customary to wait for the formal purchase order before you begin delivery on the contract or not?

A. Yes, I called for that. I had already made a delivery.

Q. On what day did you make your first delivery of ready-mixed concrete on this contract?

A. Offhand I don't know what date that was.

Q. Who kept the records of the delivery?

A. My wife

Q. Do you recall whether it was before or after September 25th?

A. It was before.

Q. At the time you made your first delivery of ready-mixed concrete, had you ever met the defendant, Nicholas Stirone?

A. No.

Q. At the time you received the formal purchase order, had you ever had any conversations with the defendant, Nicholas Stirone?

A. Yes.

Q. Will you explain to us where that was?

A. It was at the Belle Vernon plant.

BY THE COURT:

Q. At where?

A. At the Belle Vernon ready-mix plant.

Q. That's where you were mixing your concrete

A. That's right.

BY MR. TEITELBAUM:

Q. How did that come about? Will you tell the jury what happened?

A. One day that I got a call from Mr. Dierker of Duquesne Slag Company asking me to meet him at the Belle Vernon plant.

Q. Did he tell you what he wanted?

A. No. So I met him at the Belle Vernon plant. He came up in his car.

Q. Where were you waiting?

A. I was waiting at my field office.

Q. Some of the jury might now know what a field office is.

A. Well, it's nothing but an ordinary trailer. That's what I had as a field office, a van, with some doors in it.

Q. Then what happened?

A. He drove up in between their office, their shipping office and my office.

Q. He drove up in what?

A. In an automobile, car. I went over. He had a man with him. I went over and he introduced me to Nicholas Stirone.

Q. That's the defendant sitting right over there?

A. That's right.

Q. Where was Nicholas Stirone sitting?

A. On the right hand side of the car.

Q. Had you ever formally had the pleasure of meeting Mr. Stirone before?

A. I knew who he was.

Q. You knew who he was?

A. That's right.

Q. How did you know who he was?

A. I had seen him around the contractors' banquets and different places.

Q. Did you know what his position was in labor?

A. Yes, I did.

Q. You yourself had been in the construction business?

A. Yes.

Q. Had you ever heard of Mr. Stirone?

A. Oh yes, he is well known.

Q. What did Mr. Dierker say to you?

A. Mr. Dierker told me to get in the car and I got in the back seat of the car. We talked a little while. Mr. Dierker told me that Mr. Stirone had something to say to me.

Q. That's the defendant sitting there?

A. That's right, defendant.

Q. What did the defendant have to say?

A. Mr. Stirone told me he knew I had already had the contract, but he wanted 50 cents on every yard of concrete I hauled to the Ragnar Benson Company. I objected.

Q. Why did he say he wanted it?

A. Why did he say he wanted it?

Q. What for?

A. He told me he was going to keep me out of labor trouble. If I didn't pay it, I wouldn't be able to hold on to the contract. I got mad, got out of the car. Mr. Dierker got out of the car and caught me by the arm and told me, he said, "Bill, you have got to go through with it." I said, Dierker, I can't make out. He's going to cut my profit." He said, "You've got to go through with it. That's all there is to it." He says, "Now, we'll make some agreement or some arrangement on price at the plant."

Q. Did you ever ask the defendant Stirone why he wanted 50 cents a square yard or what for?

A. No, I knew what it was all about then.

Q. What did you know?

A. Well, I knew it was a shake-down when he first came there.

Q. And did you subsequently agree to give him the 50 cents a square yard?

A. I came back to the car and after Dierker had put pressure on me, I definitely gave in.

Q. What was the reason that you gave in? What was in your mind when you agreed to do this?

A. I had a lot of equipment. I had to keep working. I needed the work very, very bad, and I knew darn well, if I didn't go through with it, I wasn't getting any more contracts.

Q. Did you and Mr. Stirone have any dis ussion about how this shake-down was to be paid?

A. At the car, he mentioned something about paying, something about cash, and I said everything had to go through my books.

Q. How did you say you wanted to pay him?

A. By check. I don't believe I did say at the time whether I wanted to pay it by check or not. I just took the check in.

Q. You say you had already sold certain ready-mixed concrete and already made delivery of some by that time?

A. That's right. I had already made delivery.

Q. This payment was to be made on what basis, 50 cents per what?

A. Fifty cents on every cubic yard of concrete that went into the Ragnar Benson Company.

Q. After you agreed to pay him, where did you go?

A. I went direct to my office. I was mad as a hornet. I went down and I told my wife what we had to do.

Q. Did your wife ask you any questions about a proposition like that?

A. She said, "Well, why do you," and I told her why. I told her we wouldn't be able to hold on to the contract. I said if we want any more business, we are going to have to go along with it.

Q. What instruction did you give your wife, she was your book-keeper?

A. That's right.

Q. In charge of your office?

A. That's right. I told my wife, she said, "How are the payments going to be?" I said definitely we are going to pay by check. Everything was going to go through the company books.

Q. Did you give her any instructions as to how to enter it in the company books?

A. No, I told her no. I don't tell her how to enter anything in the books. I don't tell her that.

Q. Did you give any instructions on how to keep records on the concrete?

A. I told her to keep all records on the concrete, what we was running in the Allenport mill, keep records on the Stirone.

Q. On this delivery of concrete you had already made prior to your conversation with Stirone, did you give him any money on that?

A. We went back and picked it up and paid for it.

Q. When did you first pay Stirone money, when did you first make payments on this contract, if you remember?

A. He didn't want any money in 1951.

Q. Did he say that?

A. Yes.

Q. What did he say?

A. He told me on account of tax purposes, he'd rather wait until the '52. I would have liked to have paid it in '51. He told me to hold off until '52 and I took it in '52 in February.

Q. Where did you take it?

A. I took it to the union office.

Q. Did you know where his office was?

A. I had to look it up in the telephone book.

Q. Did you find it?

A. Yes.

Q. Was Stirone there?

A. Yes.

Q. How did you pay him, by

A. By check.

Q. Who prepared your checks and kept your books?

A. My wife.

Q. Do you yourself then have any present memory as to how much that check was?

A. I think the first check was along fifteen hundred or something. I am pretty sure.

Q. Your wife made it up?

A. That's right, I signed the first check.

Q. You signed the first check?

A. That's right.

Q. All right. Did you make your payments that first check covered deliveries in what months, do you know?

A. No, I don't.

Q. After that first check, did you deliver to him by hand? Where did you deliver the rest? How was the rest of them delivered?

A. The rest of them, all the rest were mailed to him.

Q. Did you mail it or did your wife mail it?

A. I mailed some and my wife would mail them. She would make them out.

Q. Did she make them all out?

A. She'd make them out. Of course, I would take the envelope and put it in the mail box or something.

Q. Where were they mailed to?

A. Some went to Florida, some went to New York, some went to the union office, some went to the Bigelow Apartments.

Q. What was at the Bigelow Apartments? Why did you send some to the Bigelow Apartments?

A. I think that's where he lives.

Q. That's where Stirone lives?

A. That's right.

Q. How would you know to mail them to Florida and a lot of hotels and places?

A. He would tell me that's where he's going to be at.

Q. How would he tell you?

A. He would call me or tell me where he's going to be at. Most generally he called me up.

Q. Did you ever get delinquent in your payments?

A. Yes, I did.

Q. I mean in the payments of the shake-down

A. That's right, I got delinquent lots of times.

Q. And what would happen when you got delinquent in your payment of the shake-down?

A. In a few days after I was delinquent he was on the telephone calling me up. He said, "Bill, time to get the payment in here," he says, "I need the money." Then if I didn't send the money in right away, in a few days Mr. Dierker would be on the telephone saying, "Bill, Nick wants his money. You better pay it. He's getting nasty."

Q. Did Stirone there know how much he was supposed to get paid?

A. Generally he always knew.

Q. In other words, he knew.

A. After he started getting delinquent on payments, then he knew how much generally was coming because he generally told me about how many yards I had poured in that period of time.

Q. Incidentally how were you paying this Dierker and Pittsburgh Slag for rent on that place out there?

A. Fifteen cents on every barrel of cement went through the bin.

Q. Were you making cement at that time for anybody excepting Ragnar Benson?

A. I was making cement for Ragnar Benson, for the Eichleay Corporation and I also think I had a couple of state jobs.

Q. Out of that plant, were you paying 15 cents a barrel?

A. Fifteen cents a barrel for every barrel of cement that went through the bins.

Q. And had you entered into an agreement there on a lease of your batching plant, had you not? You had a lease on the property where your batching plant was?

A. Yes, I had a lease.

Q. Were you restricted in any way as to whom you could buy your sand from?

A. I was restricted. I had to buy all from Duquesne Slag Company. Not unless there was something that

happened, that they absolutely couldn't furnish me. Then they'd tell me I could go on the outside and buy it.

Q. Did you have the right on your own to go out?

A. No, sir.

Q. Did you make ready-mixed concrete out of anything beside sand and slag and water, cement, of course?

A. No, sir.

Q. Did you ever make it out of gravel?

A. No, sir, they wouldn't allow it.

Q. Who wouldn't allow you?

A. Duquesne Slag Company.

Q. But it can be made out of gravel?

A. That's right.

Q. Now, you say that you got delinquent, Stirone would call you and sometimes Dierker would call you?

A. Dierker would call me a day after.

Q. Suppose they called your office and you weren't there? Did they talk to anybody else in the office?

A. No, sir.

Q. Would Stirone talk to anybody else?

A. No, sir.

Q. Would he talk to your wife?

A. He got so he got to talking to my wife because I'd tell him to call my wife. She knew more about it than I did.

Q. Until you told him that, did he ever talk to your wife?

A. No. I did that to get him off my back.

Q. Would he tell you what hotel you were to send it to in New York?

A. Waldorf-Astoria.

Q. Would he tell you where to send it to Florida?

A. I don't remember now whether we knew where to send it but I don't know where at.

Q. Now, did you ever discuss with Mr. Stirone the

fact that these expenses were kind of heavy and it was going to hurt you, this was hurting you?

A. I told him lots of times, "Mr. Stirone," I said, "You don't have a dime of this thing to lay out." I said, "I have got all the money to lay out." I said, "You can certainly wait a little bit, because I have Duquesne Slag to pay, I have the cement to pay for." He told me he had other obligations and other people to take care of.

Q. Mr. Rider, how long did you continue to deliver ready-mixed concrete to Ragnar-Benson, roughly?

A. It was into '54.

Q. Into '54. Did you complete the contract?

A. That's right.

Q. Did you pay Mr. Stirone the 50 cents per barrel shake-down on every barrel that you delivered?

A. Every barrel, except $1,400.

Q. So that at the time that you completed your delivery were you behind in your shake-down payments?

A. $1,400.

Q. Did Mr. Stirone want his $1,400 shake-down money?

A. He kept after it.

Q. What happened to you in 1954?

A. In 1954 I got in financial difficulty. In '55 I went I was thrown into bankruptcy.

Q. Was it a voluntary bankruptcy of your own free will or

A. No, I was thrown in by creditors.

Q. Do you remember who the creditors were that did this to you?

A. One of them was Duquesne Slag Company, and others.

Q. Now, after that time when you listed your creditors, did you list Mr. Stirone here as a creditor for that money?

A. No, we didn't.

Q. Why didn't you list him if you owed him $1,400?

A. We didn't feel like we owed it to him.

Q. Did Mr. Stirone ever file any claim with the bankruptcy, with you or do you know?

A. I couldn't tell you that.

Q. You couldn't tell whether he did or not?

A. No.

Q. You told us Dierker at the time he was helping Stirone get the shake-down said to you that well "If you have any trouble, we will make any readjustment." Did you ever go to him and ask him for an adjustment?

A. I asked him a couple of times, when I was getting behind. I asked him to make adjustments. I asked him to cut off the 15 cents a barrel. I was paying the rate eight to nine thousand dollars a year rent for a little piece of property.

Q. Now, do you remember that you were telling that Mr. Stirone when he was talking to you said, well, he was going to keep you out of labor trouble? Did you ever discuss with him later about your having any labor trouble?

A. I had lots of labor trouble after that.

Q. With his union?

A. Driver's Union.

Q. Did you go to your employee and ask him about it, about his going to help you?

A. I called him. Every time I called he told me he'd go through channels.

Q. Was he the channel?

A. No.

Q. So that Dierker didn't give you any reduction at all?

A. No, sir.

Q. And Stirone didn't help you with your labor troubles?

A. No, sir.

Q. Did Stirone render any services in return for the money he received?

A. Not that I know of.

Q. Did he ever offer you any services except the one about keeping you out of labor trouble?

A. No

Q. That's all, cross examine.

* * * * * * * * *

Cross Examination

Q. Employer-employee relationship?

A. Oh, she worked for me. I knew her before she worked for me.

Q. How long had she worked for you?

A. Oh, she went to work for me in 1950, something along in there. She was a bookkeeper.

Q. What were her duties? Where was she located?

A. What was her duties?

Q. Yes

A. She took care of the office, she ran the office.

Q. Where was the office?

A. The office at the time was in the Authority Building in Charleroi.

Q. Did you have an office at North Charleroi that she ran?

A. Then I had an office in North Charleroi. I moved to North Charleroi.

Q. Jeanne Anderson, she went with you from the one office to the other?

A. That's right.

* * * * * * * * *

Q. Well, in 1950 you said you went in the ready-mixed concrete business?

A. Oh yes, I went in the ready-mixed concrete business at Belle Vernon.

Q. Did you lease from Charleroi Supply?
A. I lease from Duquesne Slag Company.
Q. In 1950?
A. That's right.
Q. What did you lease from them?
A. I leased a piece of ground at the time and this one cement bin.

* * * * * * * * *

A. No, no. It was just an ordinary lease made up by Dierker and I. Dierker made it up and I signed it.
Q. In writing?
A. That's right.
Q. That was in 1950 sometime?
A. I think it was 1950.
Q. That gave you authority to go on Duquesne Slag Products Company's land at Belle Vernon?
A. That's right.
Q. Then there was one cement bin there. Is that the 300 barrel or the 400 barrel, do you remember?
A. I don't remember what it was. I will tell you what it was. If you want to know the name of the barrel, it was the Blawnox.

* * * * * * * * *

Q. Was that in 1950
A. I believe it was 1950 when we moved into Belle Vernon.

* * * * * * * * *

Q. 25 doesn't mean much to you then. We will say 20. Is that a great number of years?
A. I suppose I have known Bob for 20 years.
Q. You mean from now or from 1950?
A. From now.

* * * * * * * * *

Q. Is that how you got on this property in the beginning, he came to you?

A. Oh no. How I got on the property was that I had got the contract for Eichleay Corporation. Then I had to hunt out to get somebody to supply me with material.

Q. You had to hunt them up?

A. Yes, I had to hunt them up. I was going to set my batch plant at North Charleroi but I wasn't able to get material up there and the only way that I got Dierker, Dierker decided that he was going to put a crushing plant in at Belle Vernon for the slag. So he told me why not come up to Belle Vernon and set the plant up there and then we'd operate from Belle Vernon so that's what happened. When we first started, I had my bin. He didn't have a bin. I didn't have a cement bin. He had a cement bin. So we joined forces. I took a bulldozer in, leveled off, and for the time being they did some batching for me. We were supposed to have the railroad. We were supposed to have the dock built so that I could get material off the river right away. That wasn't built.

Q. Was that in 1950, sir?

A. Nineteen what?

Q. Fifty?

A. I think that was the end of 1950, something along in there.

* * * * * * * * *

Q. You are not very happy about Duquesne?

A. In billing.

Q. You are not very happy about Duquesne and the treatment you received up there, are you?

A. No, sir, I am not.

Q. They are one of the petitioning creditors in bankruptcy, are they not?

A. They are.

* * * * * * * * *

Q. Why is that?

A. Mr. Dierker turned me down, told the bonding company I wasn't any good.

* * * * * * * * *

Q. You had to pay them whatever their price was for their sand for their slag?

A. I was paying plenty. I was paying more for their materials than my competitors were being charged for it.

Q. They took advantage of you that way?

A. That's right.

Q. Wouldn't let you use gravel?

A. That's right.

Q. And you were upset about that?

A. That's right.

* * * * * * * * *

Q. Did you have to buy your sand or either gravel or slag?

A. Oh, well I knew I had to buy everything from them.

Q. You knew that if you were on their property?

A. That's right, but I don't know whether we had the 15 cent set-up at that time or not. I can't tell you.

Q. You had some figures set up?

A. I think there was some figures, but I don't remember. We worked in there without an agreement for quite awhile without even an agreement.

* * * * * * * * *

Q. You kept in contact with him about that?

A. No, not too much on it. I mean he wasn't, I can say Dierker was never any assistant to me in getting any work in the Pittsburgh Steel Company. He was going to get me all the work of maintenance in the Pittsburgh Steel Company, but I never got it.

Q. When did he tell you that?

A. Oh, he told me right at the start.

Q. That maintenance—

A. He had a pull and he would get me the maintenance, cut Charleroi Supply out and get me the maintenance work but I never got it. I got a little bit but very little.

Q. Charleroi Supply, they were a competitor?

A. That's right, they are Dravo Corporation.

Q. That's a competitor of Duquesne Slag?

A. That's right.

Q. So during those occasions that you were talking to Mr. Dierker about such matters as Pittsburgh Steel, you knew that they were going to build an addition to their mill and build one at Allenport, is that right?

A. Anyone knew that, Mr. Casey. That was all known through the Valley. There was going to be another mill built at Allenport. That was the big thing for the Valley.

Q. You were looking at that and wanted to get whatever business you could get out of it?

A. That's right.

Q. During the time that you were operating this yard in 1950 and in 1951, what was the provision for the hauling of sand into that plant? How did that get in?

A. When we first started, Dierker promised me to have the river fixed so that we could get barges in and was going to get a whirley in for me. That didn't happen.

* * * * * * *

Q. So you couldn't get any river sand in 1950, did you?

A. When we first—when it first started we had everything in by railroad. Duquesne paid for the sand, getting it there. But brother, I paid for all the demurrage when it was tied up in the steel mill, trying to get ships. Then I

worked overtime to get the thing loaded to get it off demurrage.

Q. You were very unhappy about that?

A. That was a sad deal.

Q. That was all because your sand all came in by railroad car, is that right?

A. Yes, that was the sad story about railroad cars.

Q. They'd come in at such times at night you'd have to have them unloaded or demurrage would pile up and cost you extra?

A. That's right, you had only a certain time. You had only a certain time at the steel mill to get your cars shifted because you had to catch it when their shifter came through their yards to pick it up.

Q. So it was very unhandy, costly and inconvenient as far as you were concerned to have them do that?

A. That's right.

Q. Did you tell Dierker how unhappy you were about that?

A. I told him they'd have to get the barges, so that we could get barges up.

Q. That's one of the reasons you had trouble with Duquesne Slag over the cars, the railroad cars, the demurrage and the time of placement?

A. It was very costly.

* * * * * * *

Q. In any event that plant was so set up after 1958 when you went in there, you could receive sand and gravel by rail and cement?

A. Not gravel. I couldn't use gravel, Mr. Casey.

Q. You could use it on that church job?

A. No, I couldn't. I couldn't use anything. I had to use slag, because it was a slag plant. Mr. Dierker told me it was a slag plant. I'd have to use slag.

Q. So you had no choice?

A. I had no choice.

Q. If you had any independent customers you'd have to give them slag?

A. When I had independent customers, wanted gravel, they didn't buy from me. They went across the river and bought from my competitor.

Q. That was because of the restriction Mr. Dierker put on you?

A. That's right.

Q. Then the Duquesne Slag Company agreed to put in a crane for you and they didn't do it, they only put

A. A whirley, a stiff leg.

Q. They put in only half a crane?

A. Well, when I got it, it didn't even work when I got it. It was an Army surplus part. It had cast iron bushings in it and three days after I run it, the cast iron bushings went bad and all the shive wheels. I had to tear it down and have machine work done and make new shive wheels, put in bronze bushings, then have new shafts made. I rebuilt it. Then it come —

Q. At your expense?

A. At my expense.

Q. And you were not too happy about that?

A. Of course, nobody would be happy about that.

Q. Did you tell Dierker all about that or his company?

A. Yes, they all knew about it because I kept calling him up. I think I wrote him a letter at one time.

Q. Is Dierker the only one you had any controversey with in the Duquesne Slag Company?

A. That's right.

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AT SIDE BAR

THE COURT: I am placing in an envelope marked Court Exhibit No. 1, a postal card dated

June 5, 1957, addressed to Mrs. Minnie Neuner. This postal card was delivered to me by my tipstaff at or about 9:40 a.m. today, June the 7th.

Counsel for the Government and counsel for the defendant were advised of the receipt of this postal card and the card was exhibited to them, and in accordance with the request of counsel for the defendant, I again cautioned the jury with reference to newspaper publicity, radio and T.V. coverage of the case, and also any attempt to contact them, either directly or indirectly. This card is placed in an envelope marked Court Exhibit No. 1 and is not to be opened without the permission of the Court.

MR TEITELBAUM: Counsel for the Government is satisfied with this and joins in this proceeding.

MR. CASEY: I have no objection.

(Postal card dated June 5, 1957, marked Court Exhibit No. 1.)

AFTERNOON SESSION

2:00 p.m.

WILLIAM G. RIDER resumed the stand.

Cross Examination (Resumed) by Mr. Casey:

Q. Mr. Rider, before the recess I was asking you about the date, about an inventory that you purchased from Duquesne Slag Company at or about the time of that contract that the lawyer drew up. Would you look at this, please?

A. What about it?

Q. Did you buy an inventory from them at or about that date? Did they charge you a certain amount for it?

A. I couldn't tell you, Mr. Casey. If it is billed to me, I must have bought it.

Q. You have no recollection of that?

A. I couldn't tell you. If it was billed to me, we got it.

Q. It was billed to you and you got it and you probably paid it?

A. If it was billed to me, we got it.

Q. That's what it says, We charge your account as follows: Inventory on hand as of August 7th, 1951, sand, slag and cement?

A. You are talking about the cement. There was a time in the contract that Duquesne Slag Company were getting the bill for the cement.

Q. Sure, directly?

A. That's right and then they'd send us the bill for the cement.

Q. It was them—

A. They paid the cement bill.

Q. They were guaranteeing it, in other words?

A. That's right, to start off with. The whole thing was to start that plant. Duquesne thought that they would operate the plant their selves and I would just truck out from it but it turned out that I became the operator altogether.

Q. Before October 7, 1951, would you say? At the time of that invoice or that inventory?

A. I couldn't say. I wouldn't say that. I don't know.

Q. There were two ways you operated. When you operated first under the contract, Mr. Dierker and yourself, that was where you were going to truck it and do little things?

A. No, it was a mixed-up affair when we first started because it was an oral agreement just to get going, I mean. We worked together to get the thing going.

Q. Later Mr. Dierker drew up something and he sent it to you and you signed it?

A. He brought it over. We hashed out a few angles, then I guess I signed it, I think I did.

Q. Later you got to the big agreement here that the lawyers prepared?

A. That's right.

Q. Then as of that time, there was going to be a new arrangement whereby you were going to operate it or buy it?

A. Even on this basis right here, I was operating it, but they were still buying the cement.

Q. They were still then furnishing you the slag, sand and gravel, whatever it is in here?

A. What do you mean?

Q. In other words—

A. At that time they were operating the plant.

Q. So there—

A. I mean, I was operating the plant. I was doing it all. I had all the men in there. The only thing they were doing, they were paying the cement bill at that time.

Q. They must have been assuming the slag and sand bill?

A. I was paying for the slag and sand.

Q. So they were going to sell it to you, then you were going to have a new arrangement—

A. That's right.

* * * * * * * * *

Q. Tell us how you knew about Ragnar Benson and what was the source of your information?

A. Mr. Casey, it was well known they were going to build a mill at Allenport.

Q. How was it well known?

A. All through the mill, through the papers, everybody knew there was going to be a steel mill built at Allenport.

Q. They had known it out there quite sometime before August of 1951?

A. That's right, that's right

Q. The Dodge reports, which are in business?

A. That's right.

Q. Do you subscribe to those?

A. That's right.

Q. In that they said they were going to spend thirty-five or thirty-seven million dollars at Allenport?

A. That's right.

Q. So all you business men there in the territory were very much interested in how much work you were going to get out of it?

A. That's true.

* * * * * * * * *

A. Yes, I even knew before the 29th who was going to get the job because it was all through the steel mill who was going to get the work was Ragnar Benson.

Q. It was no secret, was it, before the 29th?

A. It was no secret before.

Q. Certainly and the people up in the Valley and in the mill who were interested knew that?

A. No. Just the people in the mill, some of the officials in the mill, it was no secret there who was getting the job.

Q. That was before the 29th?

A. I heard that before the 29th but nobody was certain.

Q. But it was a well founded rumor?

A. You know, anything can change in those contracts.

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A. It was sometime after the 29th, a couple of days in there after the 29th that I called him, Mr. Casey.

Q. Didn't you call him until you were sure and until after they publicly announced it?

A. That's right, that's right.

Q. Are you sure of that?

A. I am sure of that.

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Q. Then at a later time, when did you next contact Mr. Kassab?

A. Oh about—I don't know, something along in a week or maybe four or five days. I don't know. It was about a week after that.

Q. It might help you if you were sure that Labor Day was in the next week?

A. It was about a week or better after I called him again.

Q. Well, if we are assuming and I am assuming that that either on the 30th, 31st or the 1st, that would be a week then, that would be somewhere around September 8th or 10th, is that right?

A. It would be something along in there.

Q. Now, in that conversation what was that about?

A. What have you got, 2, 3, 4, 5, 6, 7, 8, 9 and 10?

Q. Isn't that right?

A. You are bringing in September.

Q. I start September over here on Saturday.

A. Oh, I see.

Q. What did you talk to him about when you called him about a week after?

A. I called him at the office. He had told me before to call him a little later on and I called him at the office to make an appointment. I wanted to come in that day to see him and he told me he was too busy.

Q. Did you have the contract then?

A. No.

Q. Did you talk to him about what?

A. I wanted to come in and talk to him about the contract.

Q. Did you go in and talk to him then?

A. No, he couldn't see me that day and told me he was busy and I asked him again if I could see him in the evening, if he was busy that evening. He said no he wasn't, he was going to be at home.

Q. So that's when you went out to his home?

A. That's the evening when I went to Canonsburg.

Q. Would you say, sir, that was during the week of the 10th when you went out?

A. It was a week or a little longer than a week when I called him because I didn't want to leave it slip by.

Q. You discussed out there what?

A. We discussed the contract.

Q. And in the course—you mean his contract or your own?

A. My contract.

Q. Did you discuss price at that time?

A. Yes, we discussed the price. We also discussed it whether I was capable of handling the job or not.

Q. What price did you discuss, sir?

A. Eleven-seventy-five.

Q. Is that the price—

A. That's the price we put in.

Q. Is that the price you originally bid this on?

A. Yes.

Q. Are you sure of that?

A. Sure of that.

Q. Do you have any notation to make you sure of that?

A. I don't have any of my records here.

Q. So that when you got out to Jake Kassab's house, you and your wife went out there sometime in that second week of September, you discussed the price, you put in the same price that you put in in the beginning and he said to you then what?

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Q. I say, when before you left was it that he told you anything about the contract?

A. Yes, when I left, as I went to leave, he told me he said, "Bill, you have nothing to worry about, you have got it."

Q. "Bill, you have nothing to worry about, you have got it?"

A. That's right.

* * * * * * * * *

Q. Well, you delivered it then, did you not?

A. That's right.

Q. You say that was after the time that you were over to Jake Kassab's house?

A. That's right.

Q. Did you deliver that small order of concrete?

A. That's right.

Q. Where did you get that?

A. At Belle Vernon.

Q. At—

A. At the batching plant.

Q. At the batching plant we are talking about here?

A. That's right

Q. You delivered it to the job where?

A. At Ragnar Benson's job in Allenport mill.

Q. Would that be say the 13th of September that that delivery was made?

A. I can't tell you.

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Q. Did you deliver that $1,500 check to Nick Stirone in person?

A. That's right.

Q. When would you say that was?

A. Sometime in February, 1952.

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Q. You are not able to tell us then what that delivery was made for?

A. No, I am not.

Q. Who would know that in your organization?

A. I don't think anybody in my organization would. We weren't allowed in the Pittsburgh Steel during the pouring, not unless we had a breakdown and got a pass.

Q. Well, the first order, that had nothing started when you delivered the first, had there?

A. I had an idea of a mess that went in there for erecting their offices or something like that but I don't think the mill was actually started.

Q. When it first was in there, the first order it might have been for the office building?

A. It could have been.

* * * * * * * * *

Q. Did you not say that at some date after you had gone out to Jake Kassab's house out in Canonsburg, that you received a small order and delivered same?

A. That's after, yes.

Q. After that. Then in that period between the delivery date of that order whenever that might be and the receipt by you of the actual contract, is that the time that you received the call from Mr. Dierker?

A. How is that?

Q. Well, with relation, sir, to the date you made the smal—delivered the small order over to Allenport of ready-mixed concrete, after that when did you first hear from Mr. Dierker?

A. After I had delivered the first batch of concrete.

Q. It was after that?

A. It was after that.

Q. And that was after a date which I believe you have said that you were out to Mr. Kassab's house, either the 8th or the 9th or the 10th of sometime in September, so it was after that?

A. It was after we made the first delivery to the Allenport or Ragnar Benson job.

Q. I understand, but that first delivery was after the time you had been out to Jake's house?

A. After I was to Jake's house.

Q. Now we establish this, in your discourse here, that after the date, whenever it was that you were out to Kassab's, you then delivered some concrete and after that delivery date and between the time that you received the formal contract, part of Government's Exhibit 10, was that the time that Mr. Robert Dierker called and said he wanted to see you?

A. I said it was between—after I had been to Jake Kassab's house and after I had made the delivery.

* * * * * * * * *

Q. There was some date in there that you delivered —take it this way. This contract is dated September 25, 1951; at some date in September prior to that date, you made a small delivery, is that right?

A. That's right.

* * * * * * * * *

Q. You tell us what is right with reference to that?

A. I went to Jake Kassab's house, then after that we had a small delivery made at the mill.

Q. I turned it around, sir, I am sorry, I put it backwards.

A. After that why that's when Robert Dierker called me.

Q. Before what other date did he call you?

A. I don't remember what other date.

Q. Mr. Rider, what we have then is that in your testimony this morning and now you say that between the date you delivered a small order to the mill of concrete and September 25, the date of this contract is when?

A. It was in between, yes, sir.

Q. That is one date we can establish on here, September 25, 1951, that's the date of that contract, is that right, concrete mixed with sand and slag?

A. Don't forget the slag.

Q. When Dierker, Bob Dierker called you, was it before that date?

A. It's in there somewhere.

Q. After the verbal order for the small load that you took over to the plant?

A. Yes.

* * * * * * * * *

Q. Let's go at it this way. Would you be willing to say to us now on the stand that it wasn't on a Sunday?

MR. TEITELBAUM: If the Court please, the man has testified two or three times he has no recollection.

THE COURT: That's right, he has, Mr. Casey. He doesn't know the date. He can't remember.

MR. CASEY: I am just asking him now, I am going to try to eliminate Sunday.

Q. If it is on a Sunday, it's on the 23rd or the 16th or whatever date is involved.

MR. TEITELBAUM: If this man has no recollection—

MR. CASEY: I am not asking him that now.

A. Mr. Casey, I don't know the date and I still can't answer.

Q. Does your plant work up there in 1951—did it work on Sunday?

A. No, we didn't work, it wouldn't be on a Sunday. Of course, it wouldn't be on a Sunday.

Q. Then we can eliminate at least the 23rd. So was it on that day?—Would you say it was on a Saturday?

A. I couldn't say.

Q. Then it was at sometime between the small order and the formal order, the 25th here, on one of these other dates, is that right?

A. Something along in there.

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A. Oh, I have talked to Robert Dierker lots of times.
Q. Before that though, before that time?
A. Oh, a lot of times before that.
Q. And you knew his voice?
A. Oh yes, I knew it.
Q. You recognized his voice on the phone on that occasion at the North Charleroi office, did you not?
A. Oh yes.
Q. And what did he say to you?
A. He told me, he said, "Bill," I can't give the exact words, but he said he wanted to see me at the Belle Vernon plant, batch plant.
Q. When did he say that, later in the day?
A. Oh, I don't even know what time he told me to call, but I was only around the office for a little bit when I went to the batch plant. I had to wait on him about 15 or 20 minutes.
Q. If you would do that, Mr. Rider, it would probably be you stopped in in the morning, that would be a morning conversation?. Wouldn't that be reasonable?
A. Mr. Casey, I still can't answer it. I don't know what time of the day it was.

MR. TEITELBAUM: I'll be glad to let Mr. Casey testify.

THE COURT: Mr. Casey, would you please not ask that question again? He's answered it at least a dozen times.

Q. You got the call before you went to the batch plant, whatever time it was?
A. I still don't know whether I was at the batch plant before and then went to the office or went to the office and hadn't got to the batch plant yet.
Q. He said, "Bill, I'd like to see you"?
A. I'd like to see you at the batch plant."
Q. At the batch plant. Then what did you do?
A. I fooled around a little bit at the office and went

to the batch plant. My wife asked me where I was going, I told her. I said, "Dierker wants to see me."

Q. You went over to the batch plant?

A. That's right.

Q. Where did you go when you got over there?

A. My field office.

Q. Was Mr. Dierker there then?

A. No.

Q. How long were you over there before Dierker came?

A. I don't remember now. It was for a little bit. He hadn't got there yet.

Q. Mr. Rider, it was on the same day, the telephone call and the meeting?

A. Everything was on the same day.

Q. When you got there, the call evidently wasn't from the batch plant to your office in North Charleroi?

A. No, it must have been along the road or Dierker's office or something. I don't—It could have been from their office and they went out and got a cup of coffee until I got there. I don't know.

Q. In any event when you got there, they weren't there?

A. That's right.

Q. At that time, I think Mr. Teitelbaum asked you on that day you had the conversation and bearing in mind that you are now over to the batch plant after having received the telephone call, at that time you never met Nick Stirone?

A. Not that I ever recall I ever met Nick Stirone.

Q. All right now, tell us about Mr. Robert Dierker coming there.

A. Tell you about Robert Dierker calling there.

Q. Yes, coming there.

MR. TEITELBAUM: If it please the court, how about a question?

MR. CASEY: I said, please tell us about Mr. Robert Dierker coming there.

MR. TEITELBAUM: I don't know what he means either.

BY THE COURT:

Q. Do you understand the question, Mr. Rider?

A. Not unless he wants me to answer—

THE COURT: Make your question more specific, Mr. Casey.

BY MR. CASEY:

Q. Did Mr. Robert Dierker come to the batch plant in an automobile?

A. He did.

Q. Would you please tell us about same.

A. He came there in a car.

Q. How did you know that?

A. I could see.

Q. Were you standing out waiting for him?

A. I was looking for him, yes.

Q. Where did he go?

A. He drove halfway between my field office and their shipping office.

Q. All right now, what?

A. And I walked over to the car and there was a man sitting in the car. He introduced me to Nick Stirone. Of course, I knew who he was when I walked up.

Q. You had seen him before?

A. Oh yes.

Q. But you hadn't been personally acquainted with him, as best you can recall?

A. I don't ever recall meeting him. I have been around him, contractor's banquets, seeing him, every place.

Q. Would you say when you meant you had never met him, would that be the equivalent of saying you didn't know him at that time?

A. You mean I didn't know him at all?
Q. Yes, know him?
A. Oh yes, I knew who he was.
Q. You had no acquaintanceship with him?
A. Oh no.
Q. Would you say if you said you knew someone or did not know them, that it would relate to acquaintanceship rather than just knowing who they were?
A. How is that again?
Q. When you would say if you did, that I knew someone, what would you mean by that?
A. Well, you knew somebody.
Q. Yes, that you were acquainted with them?
A. Well, you don't need to be—that isn't you are friendly with them or anything like that. You just know them. Just like I know you. I have never met you before either.
Q. Is that how you knew Nick Stirone, just casually?
A. I have seen you today for the first. I mean, since this trial started. That's the first time I have ever seen you.
Q. You have had some conversation with me. Is that what you mean then, to know a person, you would have to have conversation with them?
A. Oh yes, you would have to have conversation with him to really know somebody.
Q. But you didn't know Nick Stirone as of that day well enough at least to have any conversation with him?
A. Not for conversation.
Q. You just knew who he was?
A. That's right.
Q. Now sir, at the bankruptcy hearing, your testimony was being taken relating to your assets, under oath. Were you not asked this question and did you not answer as follows: "Question: You never dealt with Mr.

Stirone before? "Answer: Knew him for a long time. I have had dealings with Nick Stirone in the construction business but this is the first time I had to do anything like that."

A. Mr. Casey, I have had—

Q. Just a minute, please. I am asking the Court, the issue is whether or not that question was asked him and whether he answered it as I read it.

THE COURT: Answer the question yes or no then, Mr. Rider.

A. If it is in the testimony I said it then.

Q. Under oath?

A. I guess I was under oath.

* * * * *

Q. On that occasion then you were introduced to Mr. Stirone by Mr. Robert Dierker?

A. Robert Dierker, at the Belle Vernon plant.

Q. Mr. Dierkeer was seated in the front seat, was he not, of the automobile?

A. That's right.

Q. And Mr. Stirone in the back?

A. Stirone in the front.

Q. In the front?

A. Sitting beside Mr. Dierker.

Q. Then you got in the back?

A. That's right.

Q. Is that how they drove up when you saw them from the front of your trailer?

A. I wasn't in the car when they drove up.

Q. I say in the trailer. You were standing in front of it, you say?

A. Yes.

Q. You could see them driving up between the two places?

A. That's right.

Q. Robert Dierker was driving, was he?
A. That's right.
Q. And another man was sitting alongside of him?
A. That's right.
Q. How far away were you when they drove up?
A. Oh, halfway, between halfway between the courtroom here, half the distance.
Q. From the back wall?
A. From the—yes.
Q. Would that be about 50 feet?
A. No, it would be about 35, 40 feet.
Q. Anyway it was close enough for you to recognize Dierker?
A. Well, I knew Dierker's car when he pulled up.
Q. Is that how you recognized it was him, by virtue of his car?
A. Of course, wearing glasses and he is a tall man, there was no mistake.
Q. There is no mistake?
A. No mistake.
Q. Now, the other man you didn't know him —
A. No, I didn't.
Q. —from that distance?
A. Not until I got close to him.
Q. When you got close to him, you could tell it was Nick Stirone?
A. Then I recognized who it was.
Q. Then you got in, then you had pleasantries about the day, it was a nice day and other matters?
A. We talked, that's right

MR. TEITELBAUM: Your Honor—

THE COURT: Just a moment, I have ruled out that sort of question before so please abide by the Court's ruling. Proceed with the questioning.

MR. CASEY: That's a leading question, sir, and I ended up is that right. That's my question.

THE COURT: I am not so sure it's a leading question.

Q. When you got over to the car, sir, please tell me what you did.

A. I got in the car. Mr. Dierker told me to get in the car. Of course, he introduced me to Nick Stirone. I got in the car. We chatted for a few moments. Mr. Dierker said Mr. Stirone had something to tell me.

Q. All right. How long after you got in the car did Mr. Dierker say that?

A. I couldn't tell you.

Q. Just after the pleasantries, is that correct?

A. We weren't there very long.

Q. I want you to tell us then, after Mr. Dierker had said that, Mr. Stirone said something, is that right?

A. Mr. Stirone told me that he knew that I had the Ragnar Benson contract. Then—

Q. Just one moment, I will break in. At that time when this conversation took place, you did have the contract, is that right.

A. I had the verbal contract from Jake Kassab given to me at his home and had already made deliveries of concrete to the Allenport mill, for Ragnar Benson.

Q. But you had not received the formal written contract, part of Exhibit 10?

A. Mr. Casey, I can't—I don't know.

Q. Now, Stirone said to you that he knew you had the contract?

A. Had the contract.

Q. What did you say?

A. I told him I did.

Q. Did you tell him from whom you got it, did he ask that?

A. I don't think so. I don't think we said anything about it.

Q. What was next said by either you or Mr. Dierker or Mr. Stirone in this automobile?

A. Mr. Stirone told me he wanted 50 cents on every yard of concrete that went into the Allenport mill of Ragnar Benson.

Q. At that time, had you had any conversation as to how much you were going to receive for the concrete going into the mill?

A. How is that again?

Q. When you had this conversation before Mr. Stirone said this to you about 50 cents a cubic yard, had there been any discussion as to how much you were going to get for delivering it over there?

A. No indeed.

Q. It had not been mentioned?

A. No indeed that price had all been settled.

Q. Had what?

A. That price had been settled before with Ragnar Benson. I had already had the contract. I already had the verbal contract from Ragnar Benson.

Q. You did not tell these two men how much you were going to get for it?

A. No, sir.

Q. So Mr. Stirone said that he wanted 50 cents a cubic yard for all the concrete that was delivered into that plant?

A. That's right.

Q. Then what did you say?

A. I asked him what for?

Q. All right, what did he say?

A. He told me he would keep me out of labor trouble.

Q. Is that what he told you, right away?

A. The first thing he told me, if I didn't pay - I got mad he said if I didn't pay him, I wouldn't be able to hold on to the contract.

Q. Who said that?

A. Stirone. Then I got out of the car,—I got mad,

I got out of the car, walked back towards the other plant. Mr. Dierker got out and took me by the arm and told me, he said, "Bill, you have got to go along with this." I said "Bob, I can't." I said, "The profits are going to be shaven so, that I am not going to be able to make out." He says, "You have to. That's all there is to it. You have got to go along." He says, "I will try to make some kind of arrangement with the price on material to take care of things."

Q. When this matter came up first about 50 cents, as best you can recollect, tell us the exact words of Stirone relating to what he would do if you didn't pay the 50 cents?

A. What he would do?

Q. Yes.

A. I can't give you the exact words. I am giving you the words as close as I possibly can give them to you.

Q. The substance of them, what were those words?

A. He told me that I wouldn't be able to have the contract.

Q. That you wouldn't be able to have the contract?

A. That's right, I wouldn't be able to keep the contract.

Q. Wouldn't be able to keep the contract?

A. Keep the contract.

Q. Did you understand that to mean the contract, the verbal contract that you had with Jake Kassab out at his house?

A. That's right.

Q. Did you tell him that Jake Kassab had already given you that contract?

A. We could have had the other contract in the office, as far as I know. The other contract could have been sent in. I wouldn't know whether it was sent in or not.

Q. But in any event you hadn't seen it yet?

A. Hadn't seen it yet but I had called for it.
Q. You mean your office, you called for it?
A. No, I called Ragnar Benson for it.
Q. You were anxious to have it sent out?
A. That's right.
Q. Then after that you got mad and said you wouldn't do it?
A. That's right.
Q. You got out of the car?
A. That's right.
Q. Mr. Robert Dierker came out and took you by the arm and said you had to, that he'd work out something with you and make some adjustment?
A. That's right.
Q. Then what did you do?
A. I had to agree then.
Q. How did you agree, what did you say, O.K.? Did you go back, Mr. Dierker dragged you back or did you walk back with him or what did you do?
A. We stood there for a little bit and talked and then went back to the car.
Q. Stirone was still in the front seat?
A. Yes.
Q. Did you get back in the car?
A. No.
Q. You stood there and talked to him?
A. I don't know whether Stirone asked me what we had decided on or Mr. Dierker said I had decided to give him the 50 cents. I just don't recall that. I know we told him we'd give the 50 cents on every yard. Stirone promised me he would keep me out of labor trouble.
Q. Is this after you got back there?
A. Yes, it was after we got back there.
Q. That was after you agreed on the 50 cents?
A. Yes.
Q. You agreed to the 50 cents because Robert

Dierker wanted you to when you were standing outside of the car?

A. He had a lot to do with it.

Q. You were his tenant and buying things from him that you would need in connection with carrying out any contract with relation to Ragnar Benson, is that right?

A. That's right.

Q. When you stood outside the car, Nick Stirone was in the car, how far away from it did you walk with Mr. Dierker, out of earshot?

A. Oh yes. Yes, we walked I suppose 25 or 30 feet, maybe 40 feet. I don't know. I was really mad.

Q. How long a time did you stay out there before you went back over to the car?

A. Oh, I don't know. I couldn't tell you how long we stood there, not too long. We were there long enough to chat the thing over.

Q. I believe you said on direct examination that "Dierker put pressure on me?"

A. Yes.

Q. Is that when the pressure was put on you, when you were out there?

A. That's right.

Q. He told you that you ought to do it and the arguments and then you gave in?

MR. TEITELBAUM: Just a minute, if the Court please that's the same type of argument.

THE COURT: Are you objecting?

MR. TEITELBAUM: I am objecting.

THE COURT: Objection sustained.

Q. What, sir, did you mean when you stated today that Dierker put pressure on you, this morning?

A. By telling me to go ahead. I'd have to go ahead and pay it.

Q. He told you that by mouth?

A. That's right.

Q. Then how long did that take you were you still mad and said you wouldn't?

A. Well, I suppose we were there maybe 10 or 15 minutes. I can't give you the exact number of minutes. We could have been there five minutes, we could have been there ten minutes, we could have been there 20 minutes, so far as I know.

Q. My notes say, sir, and I am just asking you, my notes have that you said I finally gave in. All I ask you now, what do you mean by "finally"?

A. I gave in to him.

Q. You mean by that that was after an extended argument with him?

A. That's right.

Q. What else, if anything, was said after you said O.K. or how did you tell Mr. Stirone about the 50 cents?

A. How is that?

Q. How did you tell Mr. Stirone about the 50 cents that you had got?

MR. TEITELBAUM: Objected to as repetition. It's been testified to.

A. I believe I already testified.

MR. CASEY: All right.

THE COURT: Do you withdraw the question?

MR. CASEY: Yes, sir.

THE COURT: All right.

Q. When you went back to the car, how did you go back and who was with you?

A. Robert Dierker was with me, but I don't know how we went back. I don't know whether we went back arm in arm. I doubt it very much.

Q. When you went back to the car when you told Stirone anything about 50 cents, where was Dierker?

A. Dierker was alongside of me.

Q. He was close enough to hear you say that?

A. Oh yes.

Q. And hear the conversation?

A. Dierker heard the conversation.

Q. Both yours and Mr. Stirone's is that right? Was he close enough to hear that?

A. Both what?

Q. Both your conversation, your voice and Mr. Stirone's when—

A. You mean—Oh yes.

Q. All right, after the matter of the 50 cents was disposed of, what next was said by anybody?

A. What was said? Payment. Payment was said. How we were going to pay for it. Nick brought up something about cash and I dropped it and I said everything had to go through the books.

Q. Let's go back a step. Was it after you came back to the car and Mr. Dierker was alongside of you, was it then and you made some comment about the 50 cents and said, agreed to it, then the next matter that was taken up was how payment was to be made, is that right?—Now, the witness shakes his head affirmatively.

A. Yes, yes.

Q. After the question of payment was brought up, what, if anything, did anyone say?

MR. TEITELBAUM: If it pleases the Court, that's repetitious and I objected to. The man has testified not two minutes ago.

THE COURT: Let him answer it once more, and this is the last time I will permit that question to be asked.

Read the question.

Q. (Question read.)

A. Mr. Stirone mentioned something about cash, and I said, everything has to run through the books, through our office. We'd have to drop it right there.

Q. What did he say to that, any answer to that?

A. I don't think he said anything.

Q. Did you discuss at that time how anyone—Mr Stirone was to know how much concrete was delivered?

A. You mean how much concrete was delivered at that time?

Q. Yes.

A. I don't think there was anything brought up about it, about how it was delivered.

Q. Was anything brought up at that time as to when—

A. Oh yes, there was too about it to be paid every month. That was brought up.

Q. To be paid by check every month?

A. I didn't even say check. I said everything had to run through our office.

Q. But you didn't pay any cash to Mr. Stirone?

A. Absolutely not.

Q. It was all in check?

A. That's right.

Q. Then that matter was settled about it's to be paid every month and it was not to be paid in cash, it had to be run through your books. What, if anything, else was said then?

A. I don't think there was anything else said.

Q. I thought you testified a little while ago there was something about labor, he was going to keep you out of labor trouble?

A. Oh, he was going to keep me out. I had answered that before.

Q. When did he say that?

A. He said that when Mr. Dierker and I had came back and agreed to pay him the 50 cents a yard.

Q. That was after the little walk you and Mr. Dierker took?

A. That's right.

Q. You are sure of that now?

A. Absolutely.

Q. You couldn't possibly be mistaken about that?
A. (Witness shakes head.)
Q. We will establish it this way then. How soon before these gentlemen drove away, if they did, was that statement made with reference to keeping you out of labor trouble?
A. How is that?
Q. I say, was that one of the last things that was said, just before you broke up?
A. Oh no, we were talking about payments. That was said before we talked about payments.
Q. It was after you and Dierker had come back to the car?
A. That's right.
Q. Before you walked away, the only thing about the 50 cents a cubic yard at that time, Mr. Rider, was that if you didn't pay 50 cents a cubic yard, Mr. Stirone would see that you didn't keep the contract, is that right? Is that what you are telling us?
A. Mr. Stirone, if I didn't pay the 50 cents, Mr. Stirone said that I wouldn't be able to keep the contract.

* * * * * * * * *

Q. That's the first time that you had any idea about a shakedown?
A. That's the first time, yes.
Q. Mr. Dierker—
A. But I couldn't imagine what he was coming out there for, regardless
Q. Mr. Dierker didn't tell you why they were coming out or who was going to be with him?
A. No, he did not.
Q. All right now. You did deliver concrete to the Ragnar Benson plant in regular quantities over a period of the latter part of October, November, December of 1951 and then through 1952 and 1953, is that right?

A. We delivered concrete whenever they'd call for it.

Q. You had one contract first for the hot roll mill and you knew the amount of concrete that was going to be involved then?

A. Oh no, I never knew. I mean the concrete changed, the amount of concrete changed in that mill. It wasn't all the same. It could have been over, it could have been less.

Q. In your original specifications, weren't there about 25,000 cubic yards involved?

A. I don't just remember now.

Q. Anyhow during the course of construction,didn't Pittsburgh Steel decide to double the size of their plant that meant more concrete?

A. Well, there was one that meant more, there was one meant less. You didn't know from one day to the next because they were making new changes to the plans all the time.

Q. In any event with Ragnar Benson did you make any other contract relating to the furnishing of concrete on the new plants that were added in 1952?

A. I did everything at Ragnar Benson. I supplied all the concrete for what Ragnar Benson did at Pittsburgh Steel.

Q. Did you only do that on only one contract or did you have two with Ragnar Benson?

A. No, I only had the one order.

Q. That's the one here, part of Exhibit 10, the September 25, 1951?

A. (No response.)

Q. After the $1,500 check, that you say that you delivered to Mr. Stirone personally how were the rest of the checks or money orders sent?

A. We never sent any money order, Mr. Casey.

Q. All checks?

A. Everything went by checks.

Q. Who signed all of those checks?
A. My wife signed all those checks.
Q. All except— .
A. All except the one that I had signed.
Q. That you took along. How were those checks sent to Mr. Stirone? Did your wife do that?
A. You mean how did he get them or what do you mean?
Q. Were they delivered by Mrs. Rider or messenger?
A. Oh no, they were all mailed in the mail except this one.
Q. You know enough about the office to know those were mailed?
A. Well, I think I mailed some of them.
Q. You did say that, didn't you, your wife would make them out but you mailed them?

THE COURT: He testified he mailed them to Miami and he testified he mailed them to New York.
Q. Did you mail one to Miami, sir?
A. Yes, one went to Florida, one went to the Waldorf—I mean, some went to the Waldorf-Astoria, New York.
Q. Did you mail those, did you say?
A. Oh, I don't know.

MR. CASEY: If Your Honor please, he says he doesn't know whether he mailed them.
A. I don't know which ones I mailed but I do know I mailed checks. I know where some of them went. If you started in this small order at sometime before September 25, 1951, then there was a time after you got that formal contract that you started to deliver concrete daily or weekly or some regular period of time over at the Allenport job, was there not?
A. Whenever the Ragnar Benson Company would call, that's when we delivered. They generally called in the evening or maybe called the first thing in the morning

or something. If they had a big pour, we had to get ready for it. A lot of times we have poured as high as a thousand yards.

Q. On those occasions you'd have notice?

A. I had to get geared up for it, yes.

Q. Now, if you delivered then all during the month of October, then you would bill Ragnar Benson after the month was over, is that right?

A. Yes. Well, Mr. Casey, I had nothing to do with the billing now. I don't know anything about the office, so I can't answer that.

THE COURT: Just a moment. I think we will have to adjourn until ten o'clock Monday morning.

(Whereupon an adjournment was taken until 10:00 o'clock, a.m., Monday, June 10, 1957.)

MORNING SESSION

June 10, 1957
10:35 a.m.

WILLIAM G. RIDER resumed the stand.

Cross Examination (Cont'd) by Mr. Casey:

Q. Mr. Rider, it is my recollection that on Friday we talked last about the billing out of the office for the concrete poured on the Ragnar Benson job. I think you said that you didn't know anything about that, that someone else in your organization handled it?

A. That's right.

Q. Now, after you say that Mr. Dierker and Mr. Stirone came up to the Belle Vernon batch plant and you had this conversation in the automobile and you got out and came back, when did you next talk to Mr. Stirone?

A. I believe he called me on the telephone. I believe he called me on the telephone and told me he didn't want any money until after the first of the year. It was in February.

Q. Can you tell us about when that was?

A. No, I can't.

Q. That didn't occur when Mr. Dierker was there, that was later?

A. That was afterwards.

Q. You are sure of that?

A. I am sure he called.

Q. That would be at sometime between the date that your conference with Mr. Dierker and Mr. Stirone and the time you say you took the check to his office?

A. It would be the end of the year.

Q. At the end of 1951?

A. It would be towards the end of the year.

Q. Is that the first conversation that you had with him at all was toward the end of the year, nothing in between?

A. As far as I remember.

Q. Well, you'd remember if there was any important conversation with him during that time, wouldn't you, sir?

A. I don't believe I ever had any important conversation except the one at the car, at the Belle Vernon plant.

Q. So the other conversations like toward the end of the year 1951 was only about the money, that he didn't want any money in '51, is that right?

A. That's right.

Q. At that time, had he been furnished, do you know, by your office with any listing as to the amount of concrete that had been furnished Ragnar Benson?

A. I couldn't tell you that.

Q. Your wife would know that, is that right?

A. You'd have to ask her.

Q. As far as you are concerned, you didn't give him any?

A. I didn't.

Q. Well now then, between the time in the car up at Belle Vernon and the time you say you took the check over

to Nick Stirone's office, at his union office you said back of the Carlton Hotel, you had this conversation with him about not wanting any money in 1951, but wait until the next year. You say that was about the end of the year?

A. Sometime in there. I can't set dates. I don't know the dates.

Q. You had no other conversation with him until you walked into his office, is that right?

A. I don't ever recall I had any conversation with him.

Q. Now, when you brought that first check for $1,500, Defendant's Exhibit A, was there any other thing with it, any explanatory paper or note?

MR. TEITELBAUM: If it please the court, objected to as repetitious. That's been asked several times. He said he didn't know.

THE COURT: That's true, Mr. Casey.

MR. CASEY: I thought maybe his memory might be better on Monday.

THE COURT: All right, we will let you ask it once more.

A. I told you I didn't remember.

Q. Your memory is no better today than it was on Friday?

MR. TEITELBAUM: I move that be stricken.

THE COURT: Motion is granted. I will ask

Q. Well now when—

THE COURT: I will ask the jury to disregard the remark.

Q. You did have the check, do you remember that?

A. Oh yes, I remember the check.

Q. And the check was signed by you, it was made out by your wife?

A. That's right.

Q. You said that you looked up Mr. Stirone's office in the telephone book?

A. That's right.

Q. Do you recall what address you found?

A. No, I don't.

Q. You say it was in back of the Carlton House. Can you describe it?

A. It's in back of that street somewhere, sir. I don't know the name of the street.

Q. You didn't inquire from anyone just from the telephone book?

A. (Witness shakes head.)

Q. Was it on the first floor, his office?

A. No, I'll tell you. You go up a winding old steps. There's a bunch of men standing in the hallway and up top of the steps, I don't know what they are there for, maybe they are waiting for employment. When you get to the door, you hammer on the door and somebody looks through a little hatch to see who you are. Then you give your name and then you are entered into another door to a plush office.

* * * *

Q. At that meeting that you say up in Belle Vernon in the automobile, was there any mention as to when money was to be paid?

A. Not when, but we brought it up about cash.

Q. Yes.

A. Then I said everything had to run through the company books.

Q. But no mention was made up there as to when it was to be paid?

A. I don't remember whether it was to be paid--I think it was to be paid every month. I think that's what we agreed on or something.

Q. At the time?

A. That's right.

Q. Then you did start at sometime in 1951 to deliver concrete to Ragnar Benson?

A. That's right.

Q. Did you pay every month then?

A. No.

Q. Mr. Stirone did not call you up until that date?

A. Oh yes, he called before that. He called before. He called in 1951. He didn't want the money in 1951 and he said, it's on account of taxes. I'd rather have it, but I'd rather pay it at that time.

Q. That was only one conversation toward the end of the year, wasn't it?

A. It was something in there somewhere.

Q. If you delivered concrete during the month of October, 1951, at the end of that month you had no—you didn't send any check to Mr. Stirone for October?

A. He told me he wanted me to send them. He told me when he wanted them.

Q. Where was that conversation?

A. That's when he called me.

Q. That was toward the end of the year?

A. It was in there somewhere. I told you along the end of 1951. It could be two months, it could have been one month.

Q. At least during 1951, Mr. Stirone didn't ask you for any delinquent payments?

A. Not in '51, no.

Q. Well now, after this conversation you said you had with him in '51 and then you have 1952. Did you receive calls in '52 prior to the date that you say you took the check over to his office?

A. I can't say that.

Q. What was the occasion of your taking the check over, just want to get it paid to date? To some date?

A. I don't remember. I believe I was coming into town that day and I just bring the check with me.

Q. Was it during this '51 period that you say Mr.

Dierker called you on the phone and reminded you about these payments due?

A. In 1951, oh no.

Q. That didn't occur in '51, any of that stuff?

A. No.

Q. That was after the year 1951 and probably after you had delivered that first check, is that right?

A. Oh yes.

Q. So that, Mr. Rider, any calls concerning the delinquency of the account came with regard to the other checks, other than the one that you delivered and after that?

A. It came after, it came after the first check.

Q. Well, there was no payment, was there, from you to Mr. Stirone from February 28, 1952 until the following September, 1952?

A. Give me that question again.

Q. I withdraw the question. You didn't pay Stirone anything between March the 1st, 1952 and September of 1952, the intervening five or six months?

A. I still can't answer that question.

Q. But was it during that period that you had the calls from Mr. Dierker relating to the checks?

A. I still can't answer that question.

Q. Who can, if you know?

A. It'd have to be on dates whenever the checks were signed.

Q. Didn't you tell Mr. Stiles and John J. Sweeney from the F.B.I. on this occasion in November of '55, I think you said they came out to your house that he Stirone, "insisted that I pay him in cash at the end of each month after I had received payment from Ragnar Benson for the concrete I supplied this company?"

A. I told you once, he asked for cash and I told him it'd have to run through the company books.

Q. I am just asking you. Did you tell the F.B.I.

that when they were there?

A. Whatever is in that agreement, that's what I told the F.B.I.

Q. That agreement is the one that I have just had in my hand, which is identified as Defendant's Exhibit C?

A. It was the agreement I looked at a while ago.

Q. Look at it again.

A. I don't know whether you changed it on me or not.

Q. Is that it?

A. That is it.

Q. How many times would you say that Mr. Dierker called you?

A. Oh my, I wouldn't know.

Q. But more than once?

A. Yes.

Q. Is that right?

A. Oh yes.

Q. Well now, in that statement I notice you say—you were giving that statement voluntarily, is that right?

A. That's what's in the statement.

Q. Is your testimony here voluntary?

A. I am telling what I know.

Q. You are coming here voluntarily?

A. I say I am telling what I know.

Q. You are not forced in any way to do it?

A. I am not being forced to do anything.

MR. TEITELBAUM: If the Court please, Mr. Rider was served with a subpoena. There's no question about that. I don't believe that's what Mr. Casey is talking about anyway.

* * * *

Q. Is that right?

A. Mr. Casey, when you were being hounded with Mr. Stirone, Mr. Dierk and Mr. —well, the secretary and

treasurer of Duquesne Slag Company, Mr. Myers, and some other ones and be hound and hound day after day, I became a sick man. I had to do something so I decided to take a gamble and I lost.

Q. To the tune of $15,000?

A. I don't think it was $15,000, not that I remember, I spent $15,000 at gambling.

Q. Well, it was a substantial amount?

A. It was around twelve or thirteen thousand, in there some place.

Q. What about Mr. Myers? Was there a Mr. Bragdon too at that time?

A. Mr. Bragdon not at that time. I don't remember whether Mr. Bragdon was in the company in 1950 or not. No, he wasn't with the company. Mr. Myers was with the company.

Q. Mr. Myers, he wanted the money that was due Duquesne Slag on that agreement?

A. That's right, at the same time they were demanding me to pay Stirone too.

Q. Was Myers doing that also?

A. No, Myers wasn't.

Q. He was asking for the Duquesne money?

A. That's right, and the president of Duquesne Slag was on my back for Stirone.

Q. And he kept calling you and asking you to pay Stirone the money?

A. Yes, and Stirone was on my back.

Q. What period of time was this?

A. What period?

Q. Yes, where was the time?

A. Oh, I can't mention the time.

Q. It wasn't before we have established, before February 28, 1952, the day you said you delivered that first check?

A. It was after the first check.

Q. Was it between the time after the first check and the next check in the fall if it was in the fall of 1952?

A. I told I couldn't answer any dates. I won't answer.

Q. Most of these calls that you got if we eliminate Myers now. He was on your back as you say, about the amount of money that you owed Duquesne Slag Products Company and during that period that was quite sizeable, wasn't it?

A. Many a time I had Duquesne paid down, then it would jump up. My bills with Duquesne would fluctuate. I mean, they'd go up and down.

Q. Well now, here according to Government's Exhibit 22, as of August the 31st, 1951, you owed him $19,923.07. You hadn't paid Nick Stirone any money at that time, had you?

A. I can't answer this at all.

Q. You hadn't even met him on August 31, 1951, had you?

A. How is that again?

Q. I say, you hadn't met him or didn't know him as of that date?

A. Of what date?

Q. August 31, 1951?

A. I don't know. August?

Q. August, yes.

A. I told you, Mr. Casey, I can't set a date when I met him.

Q. You have testified here under direct examination. "Question: At the time you went to Mr. Kassab's house, had you ever met the defendant, Nicholas Stirone?" And you answered no. Now, you told us here at the time you went to Jake Kassab's house, was sometime—

A. Mr. Casey, would you separate the calendar? Why run the calendar all together and confuse me?

Q. I will be glad to do that at recess.

A. That's fine.

Q. You said under direct examination you didn't know him at the day you went to Jake Kassab's house?

A. I said I knew of him.

Q. "Question: At the time you went to Mr. Kassab's house, had you ever met the defendant, Nicholas Stirone?" "Answer: No."

A. That's right.

Q. Whatever date that was, you hadn't met him before that?

A. That's right.

Q. If that date was after August 31, 1951, you hadn't met him on August the 31st, the date you owed the Duquesne Slag Products Company almost $20,000? That's what we are getting at.

A. After August the 31st?

Q. Yes.

A. No, I hadn't met Nick Stirone after August 31st.

Q. But as of August 31st, you owed the Duquesne then $20,000?

A. Well, we could owe Duquesne $70,000 and then it would drop down to practically nothing and then back up. It was never paid off. The material I was running it was terrific.

Q. You did then after—so if you did by this Exhibit owe them $20,000—

A. Mr. Casey, you couldn't—you had to be running material when you are paying eight and nine thousand dollars a year for rental on a piece of property, wouldn't you, and then paying at the rate of 15 cents a barrel for every barrel of cement went through the bin.

Q. Certainly, it was a big item?

A. That's right.

Q. They were after their money, weren't they, the Duquesne Slag Products people?

A. I don't think the Duquesne Slag Products people

were after money at that time.

Q. You went out and you borrowed $20,000 from the Peoples First?

A. I borrowed lots of money from the Peoples First. you can look up in my—I have had several hundred thousand borrowed from the Peoples First.

Q. During the course of this matter from the Ragnar Benson job at Allenport, is that when you borrowed this money?

A. I had money borrowed a lot of times for construction work.

Q. How about this time?

A. I couldn't tell you.

Q. These records show that from the August date when you owed, August 31, '51, when you owed them almost $20,000 that you still owed them that on March the 1st and is that the time that Mr. Dierker or Mr. Myers was calling you about the payment?

A. I still can't answer that question.

Q. Well now then, between those two dates Mr. Dierker did not call you about paying any money to Stirone, did he, between the date of September the 1st say, 1951 and February 8, 1952, the day you said you took that check over to the union office?

MR. TEITELBAUM: If it please the Court, that's repetition. That's been said ten times.

THE COURT: It is repetition.

Q. When then did Mr. Dierker make any telephone calls to you with reference to payment to Nick Stirone?

A. I still can't fix the date.

MR. CASEY: If the Court please, I think I am entitled to try and fix it, whether repetitious or not.

THE COURT: He has told you many times he couldn't fix the date.

Q. Put it this way: Can you fix a date with refer-

ence to the last call that you received from Mr. Dierker with reference to someone else's account other than the Duquesne Slag?

A. I still can't fix a date.

Q. You can't tell us how many calls?

A. I know there was a lot of them.

Q. You have testified that you mailed checks to the Waldorf Astoria, I believe, in New York, you mailed some of them yourself, I believe you said?

A. I would take the letter to the mail box.

Q. With reference to Dierker, was it after or before you mailed any of those checks in point of time?

MR. TEITELBAUM: Now, if the Court please, the Government counsel is sitting here in answer to my questions and throwing his hands up and walking—

THE COURT: There is nothing the Government's counsel is doing, Mr. Casey, that you need be concerned about.

MR. CASEY: This jury is concerned.

THE COURT: Mr. Casey, would you please proceed and ask the questions of the witness? Government's counsel is acting as a lawyer should act.

MR. CASEY: If the Court please, I'd like to put upon the record when I ask a question in cross examination of this witness, the Government counsel throws his hands and with a look of mocking indignation, and I want it placed upon the record.

THE COURT: You have it on the record. Now proceed and ask your question.

* * * * * * * *

BY MR. CASEY:

A. I don't make up income taxes.

Q. Do you know whether or not a business deduction was allowed or did you claim a business deduction?

A. Mr. Casey, I am an outside man. I am not in the office.

Q. Do you still have your returns, copies of your returns for the years '51, '52 and 1953?
A. Do I have them?
Q. Yes.
A. Yes.
Q. You say yes?
A. Yes.
Q. Where are they?
A. They are in this courtroom.
Q. You have them with you?
A. My wife.
Q. Oh, I see, all right.
Q. That's all, sir.

Redirect Examination

BY MR. TEITELBAUM:

* * * * * * * *

MR. TEITELBAUM: I think Mr. Casey went into that bankruptcy proceeding. He asked even a question as to whether Mr. Rider was forced to give this thing. I want to bring out nobody from the Government was even present and that was the first time it was brought up at the bankruptcy proceeding—

MR. CASEY: If the Court please—

MR. TEITELBAUM: And Mr. Casey knows it, because he read the statement.

MR. CASEY: If I may put my position in. The bankruptcy proceeding was under oath and the only purpose was to show a prior inconsistent declaration made under oath. The reason for making it or nothing—

THE COURT: The objection is sustained.

Q. Mr. Rider, did you in the course of your bankruptcy proceeding make a public statement under oath concerning your payments to Nick Stirone?

A. That's right.

Q. Do you recall when that was?

A. No, I can't, I can't recall the date.

Q. Was it before or after the first time you ever saw Mr. Stiles?

A. Oh, it was before I saw Mr. Stiles.

Q. Was any F.B.I. agent present during the bankruptcy proceeding, to your knowledge?

A. Not that I know of.

Q. You have testified as to these conversations with Mr. Dierker and Mr. Stirone and were subjected to cross examination on it. I want to ask you this: Had you heard of Nicholas Stirone prior to your meeting between he and Mr. Dierker?

A. Oh yes, I have heard of Nick Stirone through the contractors, the Contractors' Associations, I mean contractors' banquets, everybody knew Stirone.

MR. TEITELBAUM: May I have that statement that you read to Mr. Rider on cross examination in the bankruptcy proceeding?

MR. CASEY: I only have excerpts from it.

Q. Mr. Casey asked you if you hadn't been asked if you ever dealt with Stirone before and your answer was, "Knew him for a long time. I have had dealings with Nick Stirone in the construction business. This is the first time I have had anything to do like that." Mr. Casey insisted you answer yes or no when you wanted to make an explanation.

MR. CASEY: I object to any explanation. It's either he did or didn't say it under oath.

THE COURT: Objection overruled.

Q. Would you answer—would you give the explanation of that now that you wanted to make?

A. Of course, we had dealings. I mean, not me direct or my company direct but we still had dealings with Stirone's union through the Constructors' Association.

We belonged to the union.

Q. Now, what did you know about Stirone in the past? What was in your mind concerning him, his reputation?

A. Well, everybody knows Nick, he's got a lot of power.

MR. CASEY: Objected to as not redirect examination. I move it be stricken from the record.

MR. TEITELBAUM: It seems to me that is right in the question that Mr. Casey asked. He asked him whether he knew him and in explanation I asked him what he knew.

MR. CASEY: If the Court please, counsel for the Government said ten times during the direct examination of this witness as of this date, did you know Nick Stirone, and he said no. So I questioned him with reference to what he meant by knowing.

THE COURT: That is true. That was his testimony Mr. Casey.

MR. CASEY: Then I produced, I asked him whether or not under oath he did not testify as I asked there and he said that he knew him for a long time. My point is that it's a prior—

THE COURT: Now he is giving his explanation.

MR. TEITELBAUM: Right.

Q. Then the testimony was you knew him as a powerful man?

A. Yes.

MR. CASEY: At this time I object to that as not being redirect examination, not a basis as a conclusion.

THE COURT: Objection is sustained. I ask the jury to disregard the question and the answer.

Q. Why did you agree to pay Stirone this money?

MR. CASEY: Objected to as not redirect examination.

MR. TEITELBAUM: I think it is. I think there were certain statements made to him while he was in the car. Then he went out of the car. Then he came back and agreed and Mr. Casey made a distinction between two statements that were made and I want to ask now which of those statements or both caused him to make the payments. That was not brought out in direct but it was brought out on cross.

MR. CASEY: I beg your pardon. I know what was on direct because I have the transcript.

MR. TEITELBAUM: May we come to Side Bar, Your Honor? I don't like to explain it without asking the witness.

AT SIDE BAR

MR. TEITELBAUM: During the direct Mr. Rider's statement was when he sat down with Stirone in the car that Stirone told him that No. 1, he wouldn't get to hold that contract. No. 2, there would be labor peace. During the cross examination Mr. Casey was making one of these long questions in which the answer was Oh had you or Oh, hadn't you. During that time he said to him, isn't it correct that Mr. Stirone told you that thing to keep you in labor peace after you had agreed to pay him.

MR. CASEY: There's nothing in the testimony as to that. I will tell you how it came about. On cross examination I asked whether or not he hadn't told the F.B.I. in his statement. That's the only place. I said, did you make that statement. If it is in there, I said it. That's the only testimony about it.

THE COURT: Where is the record?

(Discussion off record.)

THE COURT: For the purpose of the record,

counsel for the Government is withdrawing the question.

MR. TEITELBAUM: Yes, it is not worth going into.

IN OPEN COURT

* * * * * * * *

BY MR. TEITELBAUM:

Q. Mr. Colaizzo is from Canonsburg?

A. That's right, he is a real estate man.

Q. And Mr. Stahlman is a lawyer from Charleroi?

A. That's right.

Q. What did the three of you do there?

A. Mr. Stahlman was in it first, then I got in it and then Mr. Colaizzo.

Q. Did you invest money in the building?

A. That's right.

Q. And it didn't turn out profitably, is that right?

A. That's right.

Q. I have nothing further, Mr. Rider. Thank you.

Recross Examination

BY MR. CASEY:

Q. Was that the first time when you gave this statement, and the eight checks to the Government, was that the first time you had ever seen Mr. Stiles?

A. You mean when I gave the eight checks to him?

Q. Yes.

A. No. I saw Mr. Stiles before, once before when he got the statement and we were short some checks. We had to wait for them.

Q. You gave him some checks though the first?

A. No, I didn't give him any checks on the first. He got those from the bankruptcy.

Q. Then you later got him some other checks?

A. That's right, we had to hunt. We had to hunt

around to find other checks. There was other checks from the—

Q. To Nick Stirone?

A. That's right.

Q. But that is the first time you ever saw Stiles, when he and Sweeny came out to your house?

A. That's right.

Q. That was after you testified at the bankruptcy hearing?

A. That's right.

Q. Now, this apartment building which Mr. Teitelbaum has asked you about out in Canonsburg or in Washington County, Colaizzo was the one who was running that? You just had the money in it?

A. Colaizzo was the rental agent.

Q. He was running the project, wasn't he?

A. He was renting the apartments.

Q. And arranging for the repairs and making the collections and paying the bills, wasn't he?

A. He was making the collection but we were paying the bills. Mr. Stahlman was.

Q. That's all.

JEANNE A. RIDER, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. Your name is Jeanne A. Rider.

A. That's right.

Q. You are the wife of Mr. William G. Rider, the witness who testified a little earlier this morning?

A. Yes, sir.

* * * * * * * *

Q. Now at sometime between the time that you went to Mr. Kassab's house and had that discussion and the time that the formal order was sent in, do you recall anything particular that happened?

A. Well, I don't recall whether or not we had received the formal purchase order, but I do know that after we had started to deliver concrete to the Ragnar Benson job, my husband come in the office one day very angry and called me into the private office.

MR. CASEY: Just a moment, I object to any hearsay testimony.

MR. TEITELBAUM: If it please the Court, since this testimony reflects on a state of mind of William G. Rider it has no connection or nothing to do with hearsay. I refer to numerous cases that have so held.

MR. CASEY: Motive and state of mind has nothing to do with this case.

THE COURT: Objection overruled.

Q. Incidentally do you know what the date was on which you first delivered concrete to Ragnar Benson, that first order?

A. I believe it was September the 13th.

BY THE COURT:

Q. September the 13th, did you say?

A. Yes, sir.

BY MR. TEITELBAUM:

Q. What year?

A. 1951.

Q. Well, go ahead now and tell us what you were saying, what happened when your husband called you into that room.

MR. CASEY: May I have a continuing objection to any testimony.

THE COURT: It is understood this is under your objection, Mr. Casey.

A. Well, my husband, as I stated, was very angry. I knew something was wrong. He called me into his office, told me had just returned from the batch plant and

that Mr. Dierker had been up there with a man called Nicholas Stirone.

Q. Did you know who that was?

A. No, sir, I had never heard of Nick Stirone and he said, "As if we hadn't got enough trouble now, I have to pay Nick Stirone 50 cents a yard." I said, "Well, who is Nick Stirone?" He told me that Nick Stirone was the —

MR. CASEY: Just a moment, this certainly doesn't show state of mind. It's an attempt to prove a substantive fact.

MR. TEITELBAUM: It shows state of mind because we can't ask her what his state of mind was until we get to the facts. She is merely stating the facts that are already in evidence.

MR. CASEY: If the Court please, state of mind is by the facial expression, by the stuttering, by the excitability or any other number of things which I have no objection to her testifying to.

THE COURT: No, it also involves conversation, Mr. Casey.

MR. CASEY: Well then—all right, sir.

Q. Proceed.

A. Well, I asked him, as I said, who Nicholas Stirone was. He told me he was the boss of the Laborers Union and I said, "What are you going to pay him 50 cents for every yard for?" He said, "Well, it isn't a matter of if I am going to. I have to." He told me that Nick Stirone had threatened him with the loss of the Ragnar Benson contract. Well, I got very perturbed and told him I didn't see where we would have to pay it. He said, "You don't want to see those trucks"—

MR. CASEY: Just a moment, that might show her state of mind, but I object to that as irrelevant and immaterial.

THE COURT: Objection overruled.

Q. Go ahead.

A. So my husband, when he saw I was upset over the fact that I didn't see where we should pay Nick Stirone 50 cents a yard, he told me if I didn't want to see the trucks sitting in the yard all winter we would have to pay him.

Q. Did he say anything else that Nick Stirone had stated to him about it, in connection with the 50 cents?

A. Well, he did tell me that Mr. Dierker of the Duquesne Slag Products Company told him he'd have to pay it too and I was quite surprised at that. After my husband explained to me—

MR. CASEY: If the Court please, I object to any remarks of the witness as to what she was surprised as being irrelevant and immaterial.

MR. TEITELBAUM: All right.

Q. Mr. Casey doesn't want you to tell the jury you were surprised. Just tell what happened and what your husband's state of mind was.

A. Well, my husband was very angry with Robert Dierker.

Q. Was there any discussion about labor trouble?

A. Yes, sir.

Q. What was that?

A. I asked him what Nick Stirone really had to do with the union. He told me that Nick Stirone had enough power—

MR. CASEY: Just a minute, that's objected to as not showing a state of mine.

MR. TEITELBAUM: It certainly does.

THE COURT: Objection overruled.

Q. Go ahead.

A. —had enough power in the union that if he wanted to cause any labor trouble he could, that Mr. Stirone had told him he wouldn't have any labor trouble if he paid him the 50 cents.

Q. So did your husband then give you any instructions as to what to do in relation to keeping of the books?

A. He asked me how much concrete we had delivered to the Ragnar Benson. I said, well, I didn't know. I'd have to check the records. We hadn't gotten far along in the contract then that I was really spending too much time on that work because they hadn't gotten into their big pours.

Q. Did he say anything to you or did you decide anything about how you would maintain the records for the purpose of paying the shakedown?

A. Well, my husband told me, he says, "Now I want records kept on this because I want everything run through the books."

Q. Did you keep such a record?

A. Yes, sir.

(Book marked Government's Exhibit No. 34.)

Q. I show you what has been marked for identification as Government's Exhibit 34 and ask you what that is?

A. This is the record that I kept of pours at the Ragnar Benson job on the money that was paid to Nicholas Stirone.

Q. What are the papers that are in the pocket there, as a part of this exhibit?

A. These look like copies of the pours, the record of the pour we made to the Ragnar and Benson Company, in which I sent to Mr. Stirone the original, and also there are some vouchers as to the money paid out that we kept in our records.

Q. The money paid out to whom?

A. To Nicholas Stirone.

Q. That first page as the one on top there, does that show the payments to Nicholas Stirone?

A. Yes, sir.

Q. Can you tell me now from your records what

was the date of the first delivery of ready-mixed concrete by Rider Supply Company to Ragnar Benson?

A. September 13, 1951.

Q. How much did you deliver at that time?

A. 13.5 yards.

Q. Then what was the next delivery made?

A. October the 2nd. 1951.

Q. Now, in the months of October, November and December, can you tell me how much ready-mixed concrete you delivered to Ragnar Benson?

A. What month?

Q. October, November and December.

THE COURT: That is, of 1951?

MR. TEITELBAUM: 1951.

A. Well, including the 13.5 yards that we delivered in September of 1951, it was a total of 5,079.5 yards.

BY THE COURT:

Q. When you speak of yards, you mean cubic yards?

A. Cubic yards, that's right sir.

BY MR. TEITELBAUM:

Q. Do your records indicate when you made the first payment on account of the shake-down?

MR. CASEY: If the Court please, I object to the use of the word "shake-down." I haven't objected to it heretofore.

MR. TEITELBAUM: It was a shake-down. I don't know what else to call it.

MR. CASEY: Just call it payment. You know what else to call it. This question to this witness on the record, I object to the use of the word "shake-down."

MR. TEITELBAUM: I think I can call it whatever I want. I think it was a shake-down.

MR. CASEY: I think maybe you can if I don't put an objection to your Honor. If the Court says you can't, you can't call it that.

MR. TEITELBAUM: If the Court says I shouldn't, I won't.

THE COURT: I think it would be better perhaps to refer to it in some other way.

Q. Do your records show the first moneys that were paid to Stirone?

A. Yes, sir.

Q. What was the date of that?

A. February 28, 1952.

Q. I show you what has been marked as Defendant's Exhibit B and ask you if that is—what is that?

A. This is a Rider Supply Company check paid out to Nicholas Stirone dated February 28, 1952, in the amount of $1,500 and signed by W.G. Rider.

Q. Who made up that check?

A. I typed the check stub, sir.

Q. Who signed it?

A. My husband.

Q. I see.

MR. TEITELBAUM: May I read to the jury from the back of the check, Your Honor?

THE COURT: Yes, that check has been offered in evidence.

MR. TEITELBAUM: The check which was, of course, made payable to Nicholas Stirone for $1,500, as you have heard, says on the back, Credited to the account of the within named payee,—payee being Nicholas Stirone—absence of endorsement guaranteed, Mellon National Bank and Trust Company, Pittsburgh, Pa.

Q. What did you do with that check after you made it up and your husband signed it?

A. I turned it over to my husband, sir.

Q. With that check, did you give him anything else, do you recall?

A. Not that I recall, sir.

Q. How did you furnish Mr. Stirone with the statement as to how much concrete was delivered, how was that accomplished?

A. Well, aside from that first check which I did not mail to Mr. Stirone, when I would mail him a check at the place designated by him, I would include a record of the number of yards and the date of the delivery of those yards, cubic yards of concrete, informing him as to what the payment was for, that is, the yardage.

Q. Now, this statement here, part of Exhibit 24 which is record of paid account of Ragnar Benson, Incorporated for ready-mixed concrete for period ending December, 1951, did you furnish a copy of that to Stirone?

A. Yes.

Q. How did you furnish him that?

A. Well, when my husband took that first check in, Mr. Stirone then called, I don't know just when it was, and asked if he could have a record and I made up that record. I had to go back and pick up the deliveries. I believe I mailed that record, I am not sure. I believe I mailed it to him separately without the enclosure of the payment.

Q. When does your record indicate that you made your next payment to Nicholas Stirone?

A. In this record I have here, wait until I see. I don't have a date on this.

(Group of checks marked Government Exhibit No. 35.)

Q. Go ahead.

A. I don't find a date on this record here. This is just the amount that was paid.

Q. From Exhibit 24, can you tell us more or less on a monthly basis starting with January—

THE COURT: You referred to Exhibit 24. You mean 34.

MR. TEITELBAUM: Yes, 34, I am sorry.

Q. When you look at Exhibit 34, can you tell me on a monthly basis how much ready-mixed concrete was delivered to Ragnar Benson?

A. Well, of course the amount would fluctuate according to their needs. Now, in October we delivered 2,061.5 yards. In November it was decreased to 1,496 yards. In December it was 1,511 yards. There was an additional 867.5 that I have recorded here, which for some reason I probably hadn't picked up and went back and put it in. In January, 1952, we put 2,054.5 yards.

MR. CASEY: Two thousand fifty-four?

A. That's right.

BY THE COURT:

Q. That's in January?

A. January of 1952. In February we had 1,136.5 cubic yards. In March it was decreased to 196 yards. In April 161. In May 488.5. June it was 26 yards. July it was 1,884. In August it was 2,388.5. In September it increased to 4,379.5. In October it was 4,847.5. No, I am sorry, just 4,847. In November it was 3,927 and three-quarter yards. In December it was 2,042.5. In January of 1953, it was 2,361.5. In February it was 3,022.5. In March it was 3,426.5. April, 3,451. In May, it was 1,539. In June it was 2,515 and a quarter. In July, it was 4,018 and a quarter. August, 2,791. September, it was 2,958. October was 5,309. November it was 1,717. December was 1,540. In January of 1954 we had 738 yards. February it was 646 and March was 56 yards.

Q. What was the total, Mrs. Rider, how much altogether?

A. The total, 32,764.13 yards.

Q. Did you keep these records yourself?

A. Yes, sir.

THE COURT: You haven't seen these yet, Mr. Casey?

MR. CASEY: I have not, sir.

THE COURT: I think we better recess for lunch. Any other records you have pertaining to this witness' testimony, will you show them to Mr Casey?

MR. TEITELBAUM: I think he has seen them all, Your Honor.

(Whereupon a recess was taken until 2:00 o'clock p.m.)

(Change of reporters.)

* * * * * * *

Q. How did you enter these payments in your books, under what heading?

A. Commissions.

Q. Was that your instruction from your husband?

A. No, sir.

Q. Who decided to enter them under that heading?

A. I did.

Q. Why did you so decide?

A. Well, it was very hard to describe that sort of payment and it had to be entered into our records for tax purposes and I didn't know what else to call them. It hadn't been earned so I couldn't call it wages. It wasn't payment for material or services so I couldn't list it under materials or costs of operation in that respect. So I didn't know what else to call it and I just called it commission.

Q. As you look through those checks, you will see that you have noted on there, for example I look at Check No. 2984 and it says June commission and July commission. Did you write that on there?

A. I'd have to see the checks. Yes, sir, to the best of my knowledge, that's my handwriting.

Q. Why did you write that on the check?

A. Well, sometimes we got behind and Mr. Stirone wasn't paid every month as we were supposed to pay him. He would call in and we'd have to send him his check and I stated on the check what it was for.

Q. When you got behind in your payments of this money to Mr. Stirone, would he call you up?

A. Well, he called my husband to begin with—he very seldom, I didn't talk to Mr. Stirone myself when we first started to pay him this money, and I believe my husband referred him to me several times. Then he did start to call me.

Q. You yourself on occasion did talk to him?

A. Yes, sir.

Q. What would he say to you then?

A. Asked me where his money was, how soon he was going to get it.

Q. Did he have any idea how much money he was supposed to get or not?

A. He usually knew just how much he had coming to him.

Q. Did you ever have any conversation with Mr. Dierker?

A. Yes, sir, Mr. Dierker called several times when my husband was out and spoke to me.

Q. What did Mr. Dierker tell you?

A. Mr. Dierker told me to tell Bill that Nick was getting nasty, better pay him.

Q. Would you tell Bill that?

A. Yes, I did.

Q. Subsequently would you make the payments?

A. Not all the time because sometimes we just didn't have it. We were pretty much up against it and trying to get Duquesne Slag's bill paid and sometimes Mr. Stirone had to wait a little longer than he wanted to.

Q. When we finally finished up, did you testify this morning as to how much you still owed him on these so-called payments?

A. I didn't understand the question.

Q. Do you know how much you still owed him at the time you made your last payment?

A. Yes, sir, $1,490.

Q. Do you know how much you did pay him?

A. No, I don't know the exact figures. I have to see the records.

Q. Can you by looking at Government Exhibit No. 34 tell us how much you did pay him?

A. $31,274.13.

* * * * * * *

Cross Examination

Q. Or any of the journals?

A. Mr. Stevenson kept the general ledger.

Q. How would they get into the general ledger, these payments?

A. Mr. Stevenson was our tax accountant. He had been with my husband for quite a number of years. I never interfered with his way of bookkeeping. He had his own method. He'd come up and ask for books. We'd give them to him. He'd go off in a corner by himself and do his work, and when he was through he would leave. I never interfered with Mr. Stevenson's work. He was there a long time before I was.

Q. You would write notes to him and tell him to explain entries to you, wouldn't you?

A. Well, if I wasn't there. If I was there when he'd come up, I'd answer them, if he'd have any questions.

Q. If you wanted to refresh your recollection, you'd write a note and put it in some part of the books so he could see that?

A. I may have done that.

Q. On the Stirone commissions and bonus ledger entry, how would he get the information to make that?

A. Well, he'd get it from the check stub, sir. As I told you he entered all—he had his own records. I never interfered with Mr. Stevenson's bookkeeping, as I told you. He kept his own records. How he entered it, I don't know. I never examined his books.

* * * * * * *

Q. That was you said after the 13th, I believe?

A. That was after we had already delivered concrete to Ragnar Benson.

Q. Was it after the October 2nd delivery date of which you have told us since then?

A. That I could not say, sir. I do know that we had already started to deliver concrete.

Q. It probably was that first load, is that right?

A. What was the first load?

Q. I mean it was after the delivery of that first 13.5 cubic yards of which you have told us here today?

A. You mean that my husband came—

Q. Yes, that he came back over.

A. I told you I don't know the time, sir.

Q. Have you any idea? I drew a calendar such as this on here and we have established some dates. Now this we have marked as September 1st. Now you have told us that on this September 13th, which is a Thursday that on that date, your husband delivered 13.5 cubic yards of concrete to the Ragnar Benson job, at Allenport for Pittsburgh Steel?

A. Yes, sir.

Q. That's September 13th you mean, isn't that right?

A. Yes, sir.

Q. And you made that entry in that yellow sheet in Exhibit 34.

THE COURT: She's testified to all these facts, Mr. Casey.

Q. Is that right?

A. Yes, sir.

MR. CASEY: If I may say to the Court, she might not testify to them again. I have got to ask her.

THE COURT: You have asked her on cross examination and she has been asked on direct examination.

MR. CASEY: I didn't ask her on direct.

THE COURT: I didn't say you had asked her on direct. I said she had been asked on direct. Let's keep this within the limit of reason.

MR. CASEY: In view of the Court's attitude and demeanor I now move the Court respectfully for a continuance of this case and withdrawal of a juror.

THE COURT: Motion is denied.

MR. CASEY: Upon the basis that it tends to prejudice my client and not afford him due process of law under the Constitution.

THE COURT: Motion is denied.

MR. CASEY: Exception. Do I understand that I am not permitted to ask her any more questions?

THE COURT: You may ask her whatever you wish. I am just asking you not to repeat the same questions time and again.

MR. CASEY: I can only do it in my own way. I am trying to establish when her husband came into the office, that's all.

THE COURT: She has testified. She has already testified to that.

Q. You can't tell us, is that it?
A. I can't tell you what?
Q. What date after the 13th?
A. No, sir, I told you I could not establish a date.

MR. TEITELBAUM: If the Court please, that's about the fourth damn time this lady said that.

Q. Was it shortly after?

MR. TEITELBAUM: That's what I object to, Your Honor. She says she doesn't know.

A. I don't know whether it was shortly or not. I don't know what you mean by shortly, sir.

Q. Was it a few days after, would you say?

A. I couldn't even tell you that, sir, I do know that we had already poured concrete at the Allenport mill.

* * * * * * *

Q. Then your testimony is that when your husband came over, just after that date?

A. That's what I said, sir.

Q. You didn't see Mr. Stirone at that time, did you?

A. No, sir.

Q. How long after your husband came back was it, over to the office as you testified, that you first talked to Mr. Stirone on the telephone?

A. I don't believe I talked to Mr. Stirone myself on the phone until after we had started to make that payments.

Q. That would be then after February 28, 1952?

A. That's right, sir.

Q. You had no conversation with him between that time at all?

A. No, sir.

* * * * * * *

Q. Well now, Mr. Dierker, you didn't have any telephone conversation with him with reference to any money for Stirone until after February 28, 1952, did you?

A. That's right, sir.

* * * * * * *

Q. This Exhibit E now, the last date in that relating to the first and last dates on that, relating to the concrete delivered to Ragnar Benson, what was the first date and what was the last date?

A. The first date was September 13th. The last date was December the 22nd.

Q. I see some handwriting and some striking out. Is that your handwriting?

A. Yes, sir.

Q. On the last page, about $1,500?

A. That's right, sir. That's my handwriting.

Q. Would that indicate to you that you sent the check for $1,500 out at the time that Exhibit E went out?

A. No, sir. It would not.

MR. TEITELBAUM: If it please the Court—

A. This was a record that I kept in my office as a copy of the original sent to Mr. Stirone. Now, this could have been delivered to Mr. Stirone any other time than when I put that writing on there.

Q. In any event

A. This was in my hands.

Q. In any event, it was after December 22, 1951, the last date that appears on there as being the date you delivered?

A. Yes, sir.

Q. You delivered 254 yards of concrete?

A. That's right, sir. I might add that I quite frequently checked myself on my checkbook and would go over invoices or anything that I had in my files pertaining to payments and if I didn't have them marked Paid and the check number, I would at that time do so.

Q. As far as Defendant's Exhibit A is concerned, What is the last day shown, the first and last day shown on the exhibit?

A. September the 13th, 1951 is the first date, November the 30th is the last date shown.

Q. Would it be a fair statement that that went out that you made that up and made it after November 30, 1951?

A. Mr. Casey, I have already testified that I made up many of these statements. Now just when they went

out, I don't know. I usually enclose one with the check. Now at Mr. Stirone's request, I also sent him a separate statement.

Q. Do you have any recollection as to whether or not a check went with this exhibit?

A. No, sir. I wouldn't know just whether it did or not.

Q. On Exhibit A, I notice you made that up. Will you explain that, if you can, halfway down there?

A. It says here "the yardage listed below has not been paid for by Ragnar Benson," and there's an ink blotch over the total here, but anyway the amount is $663.50.

Q. Ragnar Benson hadn't paid your husband as of the time?

A. At the time I made that statement up.

Q. That's all.

* * * * * * *

GEORGE THOMAS DOHERTY, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. What is your name?

A. George Thomas Doherty.

Q. Where do you live?

A. Dearborn, Michigan.

Q. What business are you in?

A. In the demolition or wrecking business.

MR. CASEY: If the Court please, I'd ask for an offer at Side Bar as to this witness.

AT SIDE BAR

MR. TEITELBAUM: If the Court please, I intend to establish by this witness that there was another — introduce evidence of other conduct at

about the same time as the conduct here in question, for the purpose of proving the intent of the defendant in doing what he did, the motive of the defendant, a common scheme or plan of operation by the defendant and for the point of proving that this was not any mistake or inadvertence that Mr. Rider thought he was being threatened but that it was intentional by the defendant and that the defendant was playing on the fear that Mr. Rider had of labor loss in taking the money that he took.

MR. CASEY: That is objected to upon the basis that this defendant is under another indictment which involves this man as material to this Government, which indictment Judge Sorg refused to consolidate for the purposes of trial with this case.

It is objected to upon the basis that it is proof of another crime which has no probative value so far as the indictment here is concerned and is proof of res inter alias acta and not within any of the exceptions.

MR. TEITELBAUM: If it please the Court, whether the acts—

THE COURT: Wait, I want to get your offer and objection on the record. Is that your offer and is that your objection?

MR. CASEY: I object to it upon the basis it would prove an independant crime.

MR. TEITELBAUM: I say whether the conduct—

THE COURT: I don't want your argument. Does that conclude your offer?

MR. TEITELBAUM: I want to establish that the act charged was intentional and willful, not accidental and I want to prove motive. I want to show guilty knowledge and purpose. I want to rebut any inference of mistake. I want to show this was a

common scheme or plan that the defendant used. (Discussion off record.)

THE COURT: The objection of counsel for the defendant is sustained at this time. The Court will consider this again on rebuttal, if offered.

* * * * * * * *

MR. TEITELBAUM: Yes.

If it please the Court, the Government rests.

MR. CASEY: If the Court please, I have a motion under the criminal rules of procedure. I'd like to ask leave to argue it, if I may.

THE COURT: We will excuse the jury for the time being.

(Jury excused.)

MR. CASEY: May it please the Court, the defendant Nicholas A. Stirone now moves for judgment of acquittal as provided by the rules of criminal procedure, upon the basis that the Government has not made out a case which can be submitted to the jury, it having sustained—

THE COURT: May I interrupt just one moment. Do you want all of your argument recorded or just the reasons?

MR. CASEY: Just the reasons.

THE COURT: All right, put your reasons on and then we will give the reporter a rest, if that's all right with you.

MR. CASEY: For the reasons that at Criminal No. 14871, the Government has not made out a case of violation of the Act of Congress commonly known as the Hobbs Act, upon which this indictment was drawn, for the reason that first, that the Government has shown no obstruction, delay or hindrance or otherwise affectation of interstate commerce.

Secondly, that the Government has shown no extortion as defined in the Act of Congress, and that therefore have failed to sustain the charges set forth in the indictment, and as set forth in the Government's bill of particulars.

THE COURT: Are those the reasons you are advancing?

MR. CASEY: The Government has not made out a prima facie case sufficient to submit to the jury.

THE COURT: Do you want this on the record?

MR. CASEY: No, I don't want it on the record. (Discussion off the record.)

THE COURT: The defendant's motion for judgment of acquittal is denied.

MR. CASEY: Have the record note me an exception, please.

(Jury resumed box.)

THE COURT: Mr. Casey?

* * * * *

NICHOLAS A. STIRONE, a witness in behalf of the defendant, having been duly sworn testified as follows:

Direct Examination

BY MR. CASEY:

Q. What is your name?

A. Nicholas A. Stirone.

Q. How old are you?

A. 56 next birthday.

Q. Where do you live?

A. 1506 Bigelow Apartments, Bigelow Square, Pittsburgh 19, Pa.

Q. How long have you lived there?

A. Since 1952, the month of May.

Q. What is your marital status?
A. Married, father of two children.

* * * * *

It was at that time that Mr. Dierker thought, if I knew Mr. Kassab that well, would I help to get this contract for Mr. Rider. And I immediately informed him that I didn't know Mr. Rider, I didn't have any friendship with Mr. Rider, and that I didn't know in any way that I had any labor relations with him, and that on that basis I didn't feel as though I should go ahead and intercede for and on behalf of Mr. Rider without first talking to Mr. Rider to find out whether or not he would be interested in engaging to do this chore or this errand for him.

At that time Mr. Dierker said, "Well, Nick, I can't very well speak for Mr. Rider, but I will be more than pleased to tell Mr. Rider just how you feel." "Well," I said, "sir, that is perfectly within your province. If you need me and want to talk to me, you can call me at the office." And that is the way it was let.

Now, this was on the 27th day. On the 28th day of August, 1951, I received a telephone call from Mr. Rider—Pardon me—I received a telephone call from Mr. Dierker informing me that Mr. Rider would be glad to meet me at his office at Bingham Street, South Side, Pittsburgh, on the next morning at ten a.m. The next morning at ten a.m. was August the 29th, and I agreed to do so. I went the next morning to meet Mr. Dierker for the first time in my life.

BY MR. CASEY:

Q. Mr. Dierker?
A. I met Mr. Rider for the first time in my life.

* * * *

And I told him, "Mr. Rider, if you want me to intercede for and on your behalf, I shall expect you to pay me a commission, the same as you would pay anybody else that would get you this amount of work." And he said, "I will be glad to pay you the commission." He said, "How much is it that you want?" And I said, "Fifty cents per cubic yard." He sat and pondered for a few minutes, and then he said, "Fine. It's a deal." We got up and shook hands on the deal.

And then we discussed the method of payment. And at that time I informed Mr. Dierker that this deal had to be absolutely legitimate, payments had to be made in check, and that if he had any idea that there was anything wrong or under the table, I didn't want any part of it. Mr. Dierker was sitting there all the time, listening to this conversation. Mr. Rider immediately at that time said, "Of course,"—he said—"this will be paid you on the basis of a commission of fifty cents per yard for every yard of concrete that is delivered by our company to the Ragnar Benson job." We again—

* * * * * * * *

Q. And what, if anything, did you do after that?

A. I left there and went directly to my office, and I called Mr. Jacob Kassab, the executive vice president of Ragnar Benson. I don't clearly recall now whether I carried on the conversation with him over the telephone or whether I met with him in person. And at that time it was—I believe the same day that I talked to him on the telephone and desired to talk to him in person, if I could. And I then informed him—informed Mr. Jacob Kassab that would he, as a personal favor to me, give this contract for the ready mixed concrete to Mr. William G. Rider.

At that time Mr. Kassab didn't believe, and he made it very, very specific — he said, "Nick, I don't know whether the Rider Supply can meet my schedule or can do

my job." He said, "He is just going into business." He said, "This is a big operation, and I can't afford to take any chances." He said, "There's a possibility that I may do this job myself by batching my own material right on the job." "Well," I said, "whether you do or not is up to you. But I would appreciate it, if you do give the contract, that you give it to William G. Rider." He then said, "Well now, Nick," he said—"if I do give it to Mr. Rider" he said —"now he will have to—his price will have to be right." He said, "I am not about to give him this job because you ask me to give it to him, if his price is going to be exorbitant." And I then told him that if the price wasn't right, he need not give the job to Mr. William G. Rider. "Well," he said, "that's fine then." And we let it go at that. And we then, of course, left each other; and I went about my business.

In a matter of about a couple of days Mr. Kassab called me and expressed concern all over again, that he didn't think Mr. Rider was equipped to do the job, and that would I investigate it to make absolutely certain before he gave him the job.

At that time I then called Mr. Dierker and Mr. Rider and asked them to make absolutely certain as to whether or not he could qualify to meet the schedule of operations for the Ragnar Benson Company, because Mr. Kassab was fearful of his inability to perform on the contract. Well, within a matter of twenty-four hours Mr. Dierker called me back and assured me beyond any question Mr. Rider would be able to perform on the contract. I then proceeded to again call Mr. Kassab of the Ragnar Benson Company to inform him and assure him that he could make the deliveries and meet the schedule that Ragnar Benson would designate in order to perform on the job. He said, "Well, that's fine, Nick. I will now give him the job." I believe at that time it could not have been more than the 5th or 6th of September.

Q. Then did you hear at a later time that he had gotten—that Rider had gotten the job?

A. Sir, I received a telephone call from Mr. Jacob Kassab advising me that he had, at my suggestion and recommendation, given this job to William G. Rider, or the Rider Supply Company, and that he was going to give him a verbal order—or was giving him a verbal order, that would be later followed by a formal purchase order.

At that time I thanked Mr. Kassab. And I want to make the record right and straight here, so that no one misunderstands me. I at no time told Mr. Kassab, of the Ragnar Benson Company, that I was going to make a commission on this particular business venture.

Q. Did you at any time use any threats with Mr. Rider to obtain any promise of a commission?

A. That, sir, after having heard the testimony given here, to me was so asinine that I could hardly contain myself. I at no time ever threatened, intimidated or coerced Mr. Rider. As a matter of fact, I don't know how anyone under the circumstances could have in any way threatened Mr. Rider.

* * * * * * * *

Q. Now, those checks about which I questioned you here just now, of Government Exhibit 35, did you report those matters as income in the various years involved?

A. I most assuredly did report on my tax returns every penny that was paid me on this transaction.

* * * * * * * *

A. Emphatically, no, sir.

Q. Did you ever tell him at any time that if he did pay you that money that you would see he didn't have any labor trouble?

A. No, sir.

Q. Cross examine.

* * * * * * * * *

THE COURT: We will strike the answer from the record, Mr. Teitelbaum, because I do not deem it responsive to your question.

Q. Now, will you satisfy my ego by answering my question?

A. Sir, perhaps I don't understand you when you state "other trade, occupation or profession"——

Q. I forgive you. Answer my question.

A. The only thing that I can remember is that in 1938 I may have invested some money in the drilling of oil—for oil, and I made some investments in the stock market. Now, other than that I don't recall about any other avocation, profession, or anything else.

(Two documents marked respectively Government Exhibit No. 42 and Government Exhibit No. 43.)

Q. I show you what has been marked Government Exhibit 42 and ask you if that is a copy of your 1937 income tax return.

THE COURT: What year is it for?

MR. TEITELBAUM: '37.

MR. CASEY: You say that is the income tax return?

MR. TEITELBAUM: I asked Mr. Stirone that.

MR. CASEY: If it is the return?

MR. TEITELBAUM: If it is a copy of his 1937 income tax return, yes, sir.

MR. CASEY: Is it a copy or an original, sir? May I inquire as to that?

MR. TEITELBAUM: That is what I asked Mr. Stirone, Mr. Casey.

THE COURT: As I understand the question, Mr. Casey, is this a copy of his 1937 income tax return?

MR. CASEY: I would like to know whether

MR. TEITELBAUM: Now, wait. Let the witness answer the question.

MR. CASEY: I am going to move that this evidence—if it is shown that it is taken by the Government from the files of the Internal Revenue Bureau, I ask that the evidence be suppressed, under the Constitution. That is why I am asking whether or not it is without legal authority brought here by them. If it is subpoenaed here to court, his income tax return, a copy of it, I have no objection to it. If it was taken from the records of the Government, I think it is illegal and unlawfully acquired evidence, and I move for the suppression of it. And I think I have a right to find that out.

MR. TEITELBAUM: You can't ask Mr. Stirone that.

MR. CASEY: I can ask you that.

MR. TEITELBAUM: I tell you that I obtained that evidence—that I have it pursuant to a subpoena, and that I have shown it to him and asked him what it is.

MR. CASEY: May I inquire then whether the subpoena was directed to the Internal Revenue Bureau or any Bureau of the United States Government?

MR. TEITELBAUM: Yes, it was

MR. CASEY: Then I renew my motion.

THE COURT: You what?

MR. CASEY: I move that the evidence be suppressed, upon the basis it is illegally acquired. It is his—under the Constitution of the United States and under the Internal Revenue laws, this man or any arm of the government has no right to pry into the private affairs of a taxpayer, and this is illegal evidence, against the Constitution—procured against

the Constitution. And besides that, I am amazed and surprised at the tactics of the United States Attorney's Office in doing it. He knows it is illegal.

MR. TEITELBAUM: Not only do I not know it is illegal, I am convinced it is not illegal. The evidence was not obtained illegally from this defendant. Therefore he has no right to ask for any suppression

MR. CASEY: If the Court please,

MR. TEITELBAUM: Now, let me finish, Mr. Casey. I have shown him a document and asked him what it is. Mr. Casey asked me -although I don't think he had any right to ask me - where I got it. I told him where I got it. I think now Mr. Stirone has a right to answer whether it is a copy of his 1937 income tax return.

THE COURT: Yes. Just answer yes or no. Now, it depends on what he is going to do with it after that, Mr. Casey.

MR. CASEY: If the Court please, even that is sufficient, under the Constitution, I think it is the Sixth Amendment. The Government compels him to file an income tax return, and then brings it in here. I move that it be suppressed.

THE COURT: The objection at this time is overruled.

A. I assure you, sir, I have no hesitancy in telling you it is my return.

Q. Now I show you what is Government Exhibit 43, and ask you what that is.

MR. CASEY: I have the same objection, if it is received in the same way.

Q. (Continuing) Is it a copy of your income tax return?

MR. CASEY: Just a minute. And besides that, I want to place on this record

THE COURT: Well, we will give you all the opportunity in the world.

MR. CASEY: I want to place on this record, if this document was obtained by any subpoena, the only way a subpoena can be used, according to law, is bring in the person to whom the subpoena is directed, bring him into court and ask him the questions under oath. And that if this man or any other person in his office or the Federal Bureau of Investigation got this, I charge that it is illegal and an attempt at making a man give evidence against himself.

MR. TEITELBAUM: When a witness takes the stand in his own behalf he waives any privilege against self-incrimination.

MR. CASEY: No, he doesn't.

THE COURT: That is the only thing he doesn't waive.

MR. TEITELBAUM: Well, we are entitled to question him as to any matter that is pertinent to this case.

THE COURT: That is right, you are. But he is not required to answer anything that might tend to incriminate him. There is no question about that. I agree with Mr. Casey on that proposition.

MR. CASEY: And that is what he is doing here. Here he has access to private and personal files on the part of the United States Government. He says he has subpoenaed them. How he has any authority to subpoena them into his custody I am at a loss to know. And I call upon the Court to make some comment in so far as the United States Attorney's Office, and this Assistant in particular, relating thereto.

THE COURT: Is that your objection?

MR. CASEY: Yes, sir.

THE COURT: Now, you answer the question, Mr. Stirone. Just whether or not that is a copy of your income tax return.

A. I am proud to tell this Court and jury it is my return.

BY MR. TEITELBAUM:

Q. All right, sir. May I have it? Now, sir, in 1937—

MR. CASEY: Just a moment. I think, as far as we have gone here, even though I do deem it illegal, unfair, and a few more things, I think I am entitled—just the same as Mr. Teitelbaum stood at my elbow many times—I think I am entitled to see the document.

MR. TEITELBAUM: I haven't put them in evidence. I just asked Mr. Stirone some questions.

MR. CASEY: I think I am entitled to see them, sir.

THE COURT: I think he is entitled to see them, Mr. Teitelbaum.

MR. TEITELBAUM: All right, sir

THE COURT: Now, there is a statute covering this.

MR. TEITELBAUM: Covering what, sir?

THE COURT: His income tax return.

MR. TEITELBAUM: I haven't placed any income tax returns in evidence.

THE COURT: No, you haven't.

MR. TEITELBAUM: I am asking some questions, and that is all I have asked.

MR. CASEY: If the Court please, in addition to my previous objection, I object to the questions upon the basis that the questions are being asked upon matters which are collateral to this issue and not having been asked in direct examination.

THE COURT: I don't know what these show,

but let me have a look at them, will you, please?

(Exhibits No. 42 and No. 43 handed to the Court.)

Q. Now, do you recall whether in 1937 you had any other income, other than your salary from your profession —from your work as a general representative of the International Hod Carriers and as president of Local 1058, in 1937?

MR. CASEY: Objected to, as not cross examination; and cross examination on a collateral matter.

THE COURT: Objection overruled.

A. Sir, you have presented my income tax returns. They speak for themselves. You may read them. You have my privilege to read my income tax returns. I am proud for you to read them; I am not ashamed.

Q. I just wanted to know whether this refreshes your memory as to whether you had any other income.

A. The tax returns speak for themselves. You may read from them.

THE COURT: Mr. Stirone, I direct you to answer the question. Did you or did you not have any income other than that?

A. If Your Honor the Court please, I believe I have answered the question originally when I told the District Attorney that I had invested my moneys in the stock market, and that if he called that an avocation or profession, yes, that I had. And that is what the return shows, sir.

Q. Now, you have told me that I have a privilege of reading this and asking you about it. Is that right?

A. Yes, you may.

MR. CASEY: As I say, I accord you the privilege of it. I deny your right to them and criticize you for having gotten them.

THE COURT: Just a minute, Mr. Casey. You

have put your objection on the record.

Mr. Teitelbaum, so that we may get this matter cleared up, I will give you the privilege of again asking Mr. Stirone what income he had and what were the sources, for the year 1937.

MR. TEITELBAUM: All right, sir.

Q. What was your income and what were the sources for the year 1937?

A. Net income on Item 12 minus 19 was 7,945.42. The sources of income, sir, were the International Hod Carriers, Building and Common Laborers' Union of America $2872, $1370 traveling expenses, being the allowed reimbursement expense of $1370. Then on page 3, Description: 4 lots of various stocks bought and sold through Sutro Brothers & Company — Let me see here if I get this clearly. Gross Income — let me see — 10-21-37, 10-28-37, one week, 13,527.85; Cost or Other Basis, 10,414.33; Gain or Loss, $3,113.52. And then on 11-10-37, Contract price 4,030.41; Cost or Other Basis, 3,815.00; Profit or Loss, $215. And then 100 General Electric, Cost 3,675.02; Cost or Other Basis, $4,000; the loss on this transaction was $339.08. It shows here a gain of $2,989.85.

Q. That, of course, is the item under Item 10. Right now there is another item, Item 11, Other Income, $2,720. Is that right?

A. It so states here on Item 11.

Q. Do you remember now what that—how you earned that $2720?

A. At the moment I do not, sir.

Q. Now, for 1938 did you also have other income, outside of stocks or salary from the International or salary from Local 1058?

A. It shows on 11, "Other Income, Exclude income from annuities. State nature. Use separate schedule, if necessary." $9,100.

Q. Do you recall now how you earned that $9,100?

A. At this particular time it would be hard to remember; but if I paid income tax on it, you can rest assured that I earned them somewhere.

Q. Oh, yes. Now, your total salaries during those years were less than—in '38 was less than $3500, wasn't it?

A. The record speaks for itself.

Q. Does that refresh your memory (handing Exhibit 43 to witness)?

A. This shows $3500 for salary.

Q. And other income of in excess of nine thousand dollars?

A. That's right.

Q. And at this time you can't remember where the nine came from?

A. For the moment I can't; but it is highly possible.

Q. Do you remember one time having a conference where you were under oath, down in New Jersey, about the source of that income back around 1937—back around '39 or '40?

MR. CASEY: If the Court please, I object to the line of questioning, as cross examination upon a collateral matter. It would take time in order to go back and dig out those records, if necessary, to prepare this witness in so far as that is concerned. I asked no questions relating to any income during the course of the direct examination. If this is to be an inquisition as far as this man is concerned, I want my objection upon the record. To ask a man to go back twenty years as to his income, and without his books or papers other than his income tax return, I think is unfair——

THE COURT: Well, he has already testified he doesn't remember, Mr. Teitelbaum.

MR. TEITELBAUM: No, he hasn't testified he doesn't remember whether he had a conference.

I just asked him whether he had a conference, under oath, that he can remember.

MR. CASEY: The same thing applies there.

MR. TEITELBAUM: Well, he can answer it, and if he doesn't he doesn't.

A. Am I to answer, Your Honor?

MR. CASEY: Just a moment. If the Court please, if I may break in and state that there is one indictment here at—whatever the Criminal number is—

MR. TEITELBAUM: But a man that can remember—

MR. CASEY: Just a moment, please. For my record.

THE COURT: Let Mr. Casey finish.

MR. CASEY: There is one Criminal Action here, at 14871, in which there has been a bill of particulars in addition to the indictment. And I say to this Court that all we are called upon to answer at this time is this matter involved here. And that to let the Government question on collateral matters, which might be for the purpose of contradicting him later, is not proper under these circumstances.

MR. TEITELBAUM: When a man has testified that he can remember the precise date in 1937 that he arrived in Pittsburgh, can remember the precise room in his hotel—the precise hotel he stayed at, can remember who came with him, he can remember just exactly his various procedures in organizing unions, I don't think it is out of line to remember how much money he made.

MR. CASEY: He told you nobody came with him.

MR. TEITELBAUM: I want to test his memory here.

MR. CASEY: You may do that, sir. But I

submit you can't do it on collateral matters. I have no objection to your doing it on any questions arising in direct examination.

THE COURT: Well, I will sustain the objection as far as the question pertaining to that particular conference is concerned. I don't know what that has to do with this at all.

Q. Do you remember whether you ever had a conference about your income, at which time you were asked to take an oath?

MR. CASEY: Now, if the Court please, it is the same matter.

THE COURT: Yes. I sustained that objection.

MR. TEITELBAUM: I thought that was your objection.

THE COURT: No.

* * * *

Q. Now, in 1943 you ceased to be an International—a general representative of the International Union. Is that correct?

A. Yes, sir; or thereabouts

Q. Now, it was at that time, in 1943, that your Union had a conflict with the International. Is that correct?

A. In 1943 or '44—

Q. Please, sir, just answer me.

A. Well, I am trying to set the correct time.

Q. All right.

A. To give you an honest answer, sir.

Q. That is fine. That is exactly what I want.

A. I believe in 1944 is when there was a fracas—or maybe that is not the correct word. In 1944, approximately, the International Union saw fit to file charges against our Local Union.

Q. They wanted back your charter and books and records, didn't they?

MR. CASEY: That is objected to, as not cross examination and as cross examination on a collateral matter.

THE COURT: Objection overruled.

A. Sir, they did not want the books, and they did not want the treasury, and they did not want the charter back.

Q. What was the lawsuit? Didn't Mr. Moreschi file a lawsuit against you?

A. No, sir.

Mr. CASEY: Just a moment, please. If the Court please, in order to save myself getting up each time, I would ask that I have a continuing objection to this line of questioning, as to matters which are not in the direct examination and, in my opinion, not germane to this issue.

THE COURT: Whenever you want to object you better put your objection on the record, Mr. Casey.

MR. CASEY: All right. I object to this question.

THE COURT: Objection overruled.

A. Will you restate the question again, please?

Q. Did Mr. Moreschi file a lawsuit against you at that time? And your Union.

A. Mr. Moreschi did not file a lawsuit against me.

Q. I added "and your Union."

A. And my Union.

Q. There was no lawsuit filed?

A. Not by the International Union.

Q. Was there a lawsuit filed by a man by the name of Ross Adams at that time?

MR. CASEY: Objected to, for the same reason.

THE COURT: Objection overruled.

A. Against whom.

MR. CASEY: If the Court please, the answer by the witness there seems to me to be irrefutable proof that the questions are not cross examination, because otherwise they would be known in the direct examination and there would be no question as to how it was done.

THE COURT: Mr. Casey, I have overruled your objection.

Q. Against Nicholas Stirone, also known as Nick Stirone, George Dellenbaugh, John Dunbar, Thomas Pecora, Frank Shmelevski, also known as Frank Chemel, George Brickell, as officers and individuals, and Local No. 1058, International Hod Carriers, Building, and Common Laborers Union of America, affiliated with the American Federation of Labor, in the Court of Common Pleas of Allegheny County, Pennsylvania.

A. There was.

Q. Now, was it after that lawsuit that your dispute arose with Mr. Moreschi?

MR. CASEY: Now, wait a minute. If the Court please, I object to the question, as not being cross examination. If it is after the filing of the lawsuit, the disposition of the lawsuit, I don't know; and he doesn't ask him.

MR. TEITELBAUM: I asked, filed.

THE COURT: Objection overruled.

A. Will you state your question again, sir?

Q. Did Mr. Moreschi's action take place after this lawsuit was filed?

MR. CASEY: I thought we were talking about Ross Adams.

A. I am trying to follow him, Mr. Casey.

Q. Well, just answer my questions, and you will be better off.

MR. CASEY: Now, if the Court please,—

MR. TEITELBAUM: I am sorry. That was

an improper comment, Your Honor.

THE COURT: Just a moment, Mr. Stirone. What did you say, Mr. Teitelbaum?

MR. TEITELBAUM: I said, "Don't try to follow him. Just answer my questions."

MR. CASEY: You said, "You would be better off."

MR. TEITELBAUM. I said, "You would be better off." And I said I shouldn't have said, "You would be better off."

THE COURT: There is so much colloquy here, then we lose track of the question. Now, what was your last question?

MR. TEITELBAUM: I asked him whether Mr. Moreschi's action, which he has testified to previously, took place after this lawsuit was filed.

BY THE COURT:

Q. Now, can you answer that question, Mr. Stirone?

A. I believe, sir, that there arose a constitutional question after that suit was filed. That suit was filed, I believe, in 1944. I think the Court of Common Pleas threw Mr. Ross Adams out three times running.

BY MR. TEITELBAUM:

Q. That doesn't answer my question very well. What I want to know is, did Mr. Moreschi want you to come down to see him at the International office to discuss what was alleged in that lawsuit?

MR. CASEY: Objected to, as not cross examination.

THE COURT: Objection overruled.

A. If the District Attorney is desirous of getting the record verbatim on that particular case, I shall be pleased to furnish it to this Court and to the District Attorney.

Q. I just want an answer to the question.

A. I can't remember word for word what you are trying to get at.

Q. I just want to know what Mr. Moreschi wanted to see you about.

MR. CASEY: Just a minute. That is objected to, as not cross examination. Ask Mr. Moreschi.

MR. TEITELBAUM: I did ask Mr. Moreschi. Now I want to know whether Mr. Stirone remembers what he wanted to see him about.

MR. CASEY: If the Court please, I submit to this Court that he can't test this witness's credibility upon collateral matters.

THE COURT: I have overruled your objection, Mr. Casey.

A. Repeat it again, sir.

Q. What were the charges? What did Mr. Moreschi want you to come to International Headquarters to talk about?

A. That, sir, had to do with the reinstatement of Mr. Ross Adams.

Q. And did you refuse to go to see Mr. Moreschi?

A. I did not—

MR. CASEY: Just a moment. Objected to, as not cross examination.

THE COURT: Objection overruled.

A. I did not refuse, sir. As a matter of fact, I went to Washington and spoke before the General Executive Board of our International Union.

Q. Was that before or after the Local was—certain sanctions were imposed on Local 1058 by the International?

MR. CASEY: Objected to, as posing a question which is not in the evidence, and as not cross examination.

MR. TEITELBAUM: I think it was in the record, Mr. Moreschi said they sent an International vice president here.

MR. CASEY: He didn't say anything about sanctions.

THE COURT: I can't recall anything about sanctions.

MR. TEITELBAUM: It is a sanction if an International vice president was called in here to act as a trustee for a certain period of probation. That is a sanction.

MR. CASEY: I have no objection to Mr. Teitelbaum taking the stand as a labor expert and saying whatever he wants about it, but I do object to it now, until he is sworn at least.

THE COURT: I sustain the objection to the question in that particular form.

Q. At that time what happened to Local 1058, as result of this dispute between the International and you?

MR. CASEY: Objected to, as not proper cross examination.

THE COURT: I will overrule the objection.

A. Repeat the question again, sir.

MR. TEITELBAUM (to reporter): Would you read the question, please?

Q. (Last question read.)

MR. CASEY: Now, if the Court please, I said, in order to avoid just what occurred now, I want to have a continuing objection to this line of questioning, and you said I must object each time.

THE COURT: All right. I will give you a continuing objection to this particular line of cross examination.

Q. (question again read.)

A. What happened—Repeat that again, please, so I can digest it properly.

Q. (question again read.)

A. As far as I can recall, the officers of 1058 were suspended because of an action taken by the General Executive Board of the International Union.

Q. Why?

A. Because at that particular time the International Union requested that the officers of 1058 go to Chicago to answer formal charges presented by the general president, and the Local Union took the position that because of the war they would prefer to go to Washington, D. C.

Q. What were the charges, Mr. Stirone?

A. That I don't remember, sir.

Q. You don't remember what charges were brought against you?

A. Sir, I want to repeat myself, I would be pleased to get you the formal record.

Q. I just want to know if you remember. I am just testing your memory, sir. Do you remember?

A. Not in toto.

Q. All right. In part, what the charges were?

A. The charges were, if I can remember correctly, that because of our refusal to go to the city of Chicago to attend that Board meeting we stood suspended as officers of that Union.

Q. I am trying to find out why they wanted you to go to the Board meeting. What did they want you to answer there?

A. To answer charges they were going to present before the Board. And we didn't have a copy of the formal charges.

Q. You never found out what they were?

A. I don't think it was necessary to find out because the whole matter was adjudicated within a short period of time.

Q. You went to court and asked for an injunction against Moreschi, didn't you?

A. Our Local Union saw fit to go to the Court of Common Pleas to seek redress for what they considered an unjust act on the part of the International Union.

Q. An International Union official was sent into Pittsburgh at that time—

A. Not at that time; not at that time, sir.

Q. Prior to the final disposition of your dispute was an International official sent in here?

A. The International official was sent in here, I believe a matter of a couple of months before the court—before the matter was brought to the Court of Common pleas.

Q. But after you had been suspended. Is that correct? I am talking about Mr. Echeson.

A. Mr. Echeson was here prior to the suspension.

Q. And did you cooperate with Mr. Echeson and give him the books and records, or let him examine them?

A. We gave Mr. Echeson, by consent agreement, everything that he asked for.

Q. I see. And was Ross Adams ever let back in the Union?

A. Ross Adams was given every ample opportunity within the constitution to come back into the Union.

Q. Why did you throw Ross Adams out of 1058?

A. For your information, we never threw—

Q. For the jury's information.

A. Well, you will excuse me. You are asking the question, therefore I was directing my answer towards you.

Q. That is all right.

A. I want you to know, sir,—

Q. Well, all right. I just want you to answer the question, please.

A. We never threw Ross Adams out of that Union. He suspended himself through nonpayment of dues.

Q. Would you take his dues?

A. Yes, sir.

Q. And then he filed a suit to get back in the Union, didn't he?

A. Sir, he filed a suit with deliberate intent, after being afforded the opportunity of reinstating himself in

the Union in accordance with a decision made by the General Executive Board of our International Union, he failed to avail himself of the time limitations given to him by that Executive Board.

Q. Did he file suit, trying to get back into 1058?

A. After that he filed a suit, with full intentions—with malice aforethought, is maybe the best word I can use.

Q. Against whom?

A. Against the Local Union and its officers.

Q. Any particular officers?

A. All the officers.

Q. You saw the lawsuit, didn't you? You saw the papers that were filed against you?

A. Yes, indeed, I saw them.

Q. And he made various allegations against you personally, didn't he?

A. He made so many allegations that the Court of Common Pleas laughed him out of court.

Q. Was he subsequently allowed back into the Hod Carriers Union?

A. He subsequently never made application to our Union.

Q. Do you know whether he ever was subsequently permitted to enter another Local Union of the Hod Carriers?

A. That I don't know.

Q. You never heard anything about it?

A. Sir, I believe, if my memory serves me right, that during that fracas with 1058 and the International Union he attempted and probably was accepted in Local 178 of the Demolition and Scrap Metal Workers.

Q. You know he got into Local 178, don't you?

A. You asked me the question, I am trying to give it to you as honestly as I can.

* * * * * * * * *

Q. What is the Ruston Company?

A. The Ruston Company, sir, is—

MR. CASEY: Just a minute. Objected to as immaterial and not proper examination.

THE COURT: Objection overruled.

A. The Ruston Company, sir, is the result of a partnership formed in 1944, I believe, then dissolved and is now a sole proprietorship owned by me.

Q. What does the Ruston Company do?

A. The Ruston Company keeps a record of things that I do in the nature of legitimate business in order that I satisfy the Bureau of Internal Revenue with a proper record of what business that I do.

Q. What kind of business do you do, Mr. Stirone?

A. That could be anything within the legal category of the Constitution of the United States.

Q. You don't know what kind of business the Ruston Company does?

A. Sir, The Ruston Company is not limited as a fictitious trade name.

Q. I am not asking you that. I am asking you what it does.

MR. CASEY: I object to the counsel arguing with the witness.

MR. TEITELBAUM: I am not arguing with him at all.

THE COURT: I don't consider that to be an argument, Mr. Casey.

MR. CASEY: I take it then I am overruled?

THE COURT: You are overruled.

A. Will you please rephrase your question or tell me the question?

Q. What does the Ruston Company do?

A. Mr. Teitelbaum, The Ruston Company does anything within the Constitutional provision allocated to an American Citizen.

Q. What has it done, Mr. Stirone?

A. It has done a multiple number of things of which I can not give you an exact detailed picture of each item that is done.

Q. Does it buy and rent equipment?

A. Yes, sir.

Q. Heavy construction equipment?

A. Yes, sir.

Q. To whom does it rent it?

A. It rents it to the contractors or those of them who wish to rent it.

MR. CASEY: If the Court please, I object to this line of questioning as having no probative value, being not proper cross examination, it has no relevance on the issue here involved.

THE COURT: Defendant's objection is overruled.

A. May I, sir—I want to make a correction to that statement.

Q. Oh sure, I want you to make corrections.

A. In order that the record be kept straight.

Q. Just make your correction.

A. I believe that the Ruston Company had in its books, there are records of two pieces of equipment which were originally owned by Mrs. Stirone. I just wanted to get that correction because if my memory serves me right, that was the only two machines that were owned by that company that was engaged in the heavy construction industry.

Q. After you got married, Mrs. Stirone gave the equipment to you, is that right?

A. Mrs. Stirone never transferred title to those machines to me.

Q. Didn't you tell me you were the sole owner of the Ruston Corporation—Ruston Company?

A. That is very true but we have submitted joint

tax accounts, joint tax figures and therefore it would make her as much an owner of that company as I am.

Q. I see. Did you one time rent a shovel to Perini Brothers when they were digging the Squirrel Hill Tubes?

MR. CASEY: If the Court please, I object to that as not cross examination and having no probative value, cross examination on a collateral matter and the type of matter upon which the Government could not have produced evidence in its case in chief.

THE COURT: The objection is overruled.

Q. Would you please restate your question?

A. Did you rent a shovel to Perini Brothers when they were digging a tunnel under Squirrel Hill in the Parkway?

A. That shovel was rented, sir, by Mrs. A. E. Stirone through a company that she owned prior to my marriage.

Q. That had nothing to do with the Ruston Company?

A. No, it did not at that time have anything to do with the Ruston Company.

Q. When was that shovel bought?

A. I believe, sir, around 1948 sometime.

Q. Did you handle the rental for Mrs. Stirone to Perinis or did she deal with them herself?

MR. CASEY: Objected to as not proper cross examination.

THE COURT: Objection is overruled.

A. Would you please restate the question?

THE COURT: Will you read the question?

Q. (Question read.)

A. Sir, if my memory serves me right, that rental was paid directly to Mrs. Stirone or her assignee.

Q. I asked you who negotiated with Perini Brothers, you or her?

MR. CASEY: Objected to as not proper cross examination.

THE COURT: Objection overruled.

A. Sir, if my memory serves me right, I believe that Mrs. Stirone herself and I believe I may have been with her at that time.

Q. Do you know what the rental was on the shovel?

MR. CASEY: Objected to as not proper cross examination.

THE COURT: Just a moment. I didn't quite hear that question.

MR. TEITELBAUM: I asked him, sir, if he knew what the rental was on the shovel.

THE COURT: The objection is overruled.

A. I believe, sir, the rental was $2,000 a month.

Q. You had a contract for two years of the rental?

A. Sir—

MR. CASEY: Objected to as not proper cross examination.

THE COURT: Objection is overruled.

A. Sir, I did not have any rental contract. That rental contract was with somebody else.

Q. Was there a rental contract?

MR. CASEY: Objected to as not cross examination.

THE COURT: Objection overruled.

A. I don't remember, sir, whether there was or not.

Q. Do you remember with whom the contract was?

MR. CASEY: Objected to as not cross examination.

THE COURT: Objection overruled.

A. That I don't remember as to who the individual was the contract was made with.

Q. Who got the $2,000 a month?

MR. CASEY: Objected to as not proper cross examination.

THE COURT: Objection overruled.

A. Certainly not I.

Q. Do you know who got it?
A. I don't remember.

MR. CASEY: Just a minute until I get my objection in. Objected to as not cross examination.

THE COURT: Objection is overruled.

Q. Did you include the income from that shovel in the joint income tax return?

MR. CASEY: Objected to as not proper cross examination.

Q. For the year in which the rental was received?

THE COURT: Objection overruled.

MR. CASEY: Just a moment. I include in my objection the latter part of the question.

THE COURT: You do what, Mr. Casey?

MR. CASEY: I said I included—I objected before was finished with the question. I want to have my objection cover the latter part of his question also.

THE COURT: That objection will be sustained.

Q. Did you include the income from that shovel on your books and records of your personal income or your wife's income, your joint incomes or of the Ruston Company?

MR. CASEY: Objected to as not proper cross examination.

THE COURT: I will sustain the objection to that.

Q. How much did you pay for the shovel—how much did the shovel cost when it was bought, do you know that?

MR. CASEY: Objected to as not proper cross examination. It has no probative value.

THE COURT: Objection overruled.

A. I did not buy the shovel, sir.

Q. You don't know what it cost?

A. I wouldn't want to hazard a guess.

Q. You have been in this business for some years. Do shovels of that type ever cost over $20,000?

MR. CASEY: Objected to as not cross examination.

THE COURT: Objection overruled.

A. Sir, shovels can cost from $5,000 to half a million dollars.

Q. I am talking about that shovel.

A. Sir, I did not buy that shovel. Therefore I wouldn't know the price.

Q. But would a shovel of that type ever cost over $20,000?

MR. CASEY: Objected to as calling for a conclusion.

MR. TEITELBAUM: I am talking of the type of shovel it was at the time it was bought.

MR. CASEY: Objected to as calling for a conclusion on the part of the witness.

THE COURT: Better first ask him if he knows.

Q. Do you know, sir?

MR. CASEY: Objected to as not having been properly qualified.

THE COURT: That objection is overruled.

A. Will you please repeat your question, sir?

Q. Do you know what a shovel of the type that was rented to Perini Brothers would have cost at the time that shovel was bought?

A. Sir, in trying to answer that question I would have to know many varied trade makes of that type of shovel because the prices vary and therefore I am unable to give you the exact price of the shovel.

* * * * * * * *

Robert O. Dierker—Direct

ROBERT O. DIERKER, a witness called by the defendant, having been duly sworn, testified as follows:

Direct Examination

BY MR. CASEY:

Q. What is your name, sir?

A. Robert O. Dierker.

Q. Mr. Dierker, please speak into that contraption, so the jury can hear you.

A. Robert O. Dierker.

Q. Where do you live?

A. No. 9 Standish Boulevard, Mount Lebanon, Pittsburgh 29.

Q. What is your business or occupation?

A. I am president of the Duquesne Slag Products Company.

Q. And what is the Duquesne Slag Products Company?

A. The Duquesne Slag Products Company commercializes blast furnace slag produced by the various steel mills in this area—some of the various steelmills.

Q. Does it have distributing plants or crushing plants in relation thereto?

A. We have four crushing plants in this immediate area.

Q. Where are they?

A. One is at Aliquippa; one is at 4116 Second Avenue, Pittsburgh—

Q. Is that what is known as Brady Street?

A. No. Brady Street is a batching yard. It is not a slag plant, it is simply a distributing plant. One is at Buttermilk Hollow, in the Buttermilk Hollow Road, in West Mifflin Borough; and the other at Monessen, or Belle Vernon.

Q. In the course of your business does the Duquesne Slag Products Company handle and sell sand?

A. We handle sand in order to prepare concrete or for use in connection with sand, river sand.

Q. How long has the Duquesne Slag Products Company been in operation, sir?

A. Our charter reads 1908; I don't know the month.

Q. Has it been in business since that time?

A. Since 1908, yes, sir.

* * * * * * * *

Q. Did you have any conversation then relating to the job?

A. Oh, I can't recall—of course, it was six years ago—everything that went on. But basically, Mr. Stirone said to me, "I know some of these people pretty well in the Ragnar Benson Company, some of the officials." He said, "I may be able to help you get that contract" — "to help Rider Supply Company get that contract—or Rider Concrete." He said, "Do you suppose Mr. Rider would be interested in my giving him any help?" I told him I didn't know. And I can't say this definitely, but I believe Mr. Stirone asked me, "Would you like to ask Mr. Rider and see if he is interested?" And I told him I would, I would ask Mr. Rider. I left that point, and left this luncheon, whatever it might have been, came back to the office and called Mr. Rider by telephone. Shall I go from there?

Q. Just go on, sir.

A. I called Mr. Rider and told him—asked him if he was going to be in the next morning, told him I would like to see him about a matter. At the time our plant was going on. I frequently visited that site. And I often, very often, left from home and didn't go directly to the office, but came down the other way from the plant, see how the work was progressing. I saw Mr. Rider there and told him my conversation with Mr. Stirone. I told him he thought he might be able to help him, that he knew some

people there; if he was interested, why,—Oh! I said that Mr. Stirone told me that if he could get that work he would want a sales commission. I told Mr. Rider I didn't know what the commission was, he didn't mention, I had no idea; but if he was at all interested in it, I would make the arrangements with Mr. Stirone where they could meet.

I came back down to the office—I asked Mr. Rider if he could meet Mr. Stirone the next day, if it suited Mr. Rider, if he was coming down or would want to come down.

I came back to the office and called Mr. Stirone. I said, "Mr. Rider is apparently interested in talking to you. Do you want to see him, and where—or when do you want to see him, and where?" He says, "How about tomorrow morning?" And I said, "Where?" He said, "why not make it your office?" He says, "He knows where that is. And"—he says—"this place I am is a little difficult to find. Why not make it at your place?" I says, "I will call Mr. Rider back, and unless you hear from me it will be that time tomorrow morning"—I don't recall what time it was.

The next morning I got a call from the receptionist and she said there was a Mr. Rider and Mr. Stirone in there. I had somebody in the office. And after a short delay they came up the stairs. Mr. Stirone was first and Mr. Rider second. I said to them, "Have you folks met?" And I might mention, incidentally, at the Carlton House Mr. Stirone said he had never met Mr. Rider. And Mr. Rider had told me when I was talking to him that he had never met Mr. Stirone, that is, when I talked to him in our plant. They came in the office, and I said—I believe this is about all—I said, "Mr. Rider, this is Mr. Stirone. He thinks he can help you. You fellows go from there." They made their own—I said nothing further.

Q. What did they say? Do you recall that?

A. Mr. Stirone said he knew some people very well in the Ragnar Benson, and he thought he could probably give him some assistance to get him that order. He says, "If I do get you that order, would you be willing to pay me a commission of fifty cents a cubic yard?" That is the first I had heard mention of this price per yard. Mr. Rider said—I don't know how long a time it was—he said he would be glad to have him talk for him. And with that I believe—

Q. Well, did the meeting break up after that?

A. There was one thing said there. Mr. Rider said to Mr. Stirone, "How do you want me to pay you?" Mr. Stirone said, "As far as I am concerned, this is an open and aboveboard, legitimate proposition." He says, "You pay me by check." He says, "I intend to take it off my income tax." And he says, "You, of course, will take it as a cost of sales—or sales cost." I believe that is pretty much what was said.

* * * * * * * *

Q. Now, were there any threats or intimidation used by Mr. Stirone in the course of that meeting?

A. No sir. Everything was—As I have said, there were no threats whatsoever made, there was no mention of any threats; there was no mention whatever.

* * * * * * * *

JACOB G. KASSAB, a witness in behalf of the defendant, having been duly sworn, testified as follows:

Direct Examination

BY MR. CASEY:

Q. What is your name?

A. Jacob Kassab.

Q. Where do you live?

A. Canonsburg.
Q. How long have you lived there?
A. Oh, approximately 15 years.
Q. What is your business or occupation?
A. Construction.
Q. With whom?
A. Ragnar Benson.
Q. What position do you hold with them?
A. Vice president.
Q. As vice president what are your duties in the area? How were you employed in 1951?
A. Overall charge of company activities out of the Pittsburgh office.

* * * * * * * *

Q. Well now, Mr. Kassab, in 1951 did you have any conversation with Nick Stirone with reference to the concrete on this job?
A. I did.
Q. Will you turn to the jury and tell them just what you know about it and what occurred?

THE COURT: Did you specify a date, Mr. Casey, or not?

MR. CASEY: I said in 1951.

THE COURT: Oh, I am sorry. That's what I didn't catch.

A. Well, in the negotiations of these bids we finally got the job, it was a problem of finding out who could best supply us. My superintendent on the job at the time was very insistent on setting up our own plant because of being sure of service. I myself was against it. However, having the responsibility of running the job, I did not, would not overrule him until I could convince him otherwise. Rider approached me, first by a bid, sending me a bid, I don't know if it was by telephone or in writing. It was by writing. I no longer have a copy of it. Then sometime after we got the job, within a few days, I would say,

Stirone called me or saw me personally. I don't remember which it was and told me, asked me he'd appreciate everything being equal, if I would favor Rider with a job and I told him that the only way that I would favor him is if he would give, if he would wind up with the low bid on it. I wasn't giving my hand out as to what the bids were. I wasn't, not having had any experience with him in the business before, with Rider, I told Stirone I wasn't sure he could furnish the job and my man on the job was of the same opinion.

MR. TEITELBAUM: If it please the Court, I'd like any hearsay eliminated. Just what Mr. Kassab knows and said himself.

THE COURT: I think that's right.

MR. CASEY: Hearsay is the same as opinion.

A. I didn't follow you.

Q. I just want what you knew, not what anybody said or what somebody else thought.

A. Anyway, Stirone called me and I told him, I said that such was the case, so it was very shortly after, I don't know a day or two it might have been the same day and he called me back and told me that he was sure Rider could furnish the job and Rider come out to my house one evening. I can remember I was mowing the lawn and come in the house. I don't know if it was by invitation or whether it was just casually dropped by, and we went, him and I went in the den and talked and the wives stayed out in the living room and talked. On the way out, we discussed the job. In the meantime he was rather concerned about the fact that his competitor being a much larger concern, pressure would be brought on to give it to them irregardless of their price. I told him he didn't have to worry about that. However, I still had to sell my man on the job, that he was capable of handling the job, I still had that to do. As he was leaving, I again told him I didn't think he had anything to worry about,

and it wasn't—oh, it was sometime later before I confirmed to him, I checked my records here just the other day of the telephone calls and I just had brought to me by messenger, I didn't know I was going to be called this afternoon, either the 19th, the 20th or the 24th of September, I think it was, the telephone record will show, I called him and confirmed the fact that he had the job and on the 26th of September, I think we confirmed it in writing. We had originally figured $12 for the job, which our bid showed and I produced the files to Mr. Stiles of the F.B.I. and showed him and we bought it though at eleven-seventy-five from Rider, a yard.

* * * * * * * * *

THE COURT: That's all, Mr. Rider.
MR. CASEY: Defendant again rests.

* * * * * * * * *

REBUTTAL TESTIMONY

* * * * * * * * *

GEORGE THOMAS DOHERTY, a witness in behalf of the Government, having been previously sworn, took the stand.

MR. CASEY: Since Mr. Doherty has been sworn and identified previously, I'd ask counsel to make an offer at Side Bar.

AT SIDE BAR

MR. TEITELBAUM: I offer this witness for the purpose of proving that at the same time as the matter here being tried took place at relatively the same time, Mr. Doherty was compelled by the use of fear to give money to Nicholas Stirone.

MR. PALETTA: To make payments.

MR. TEITELBAUM: Rather — that's right, he was asked by Nick Stirone to make payments to him and required to give things of value.

THE COURT: Is that your entire offer? That is your offer?

MR. TEITELBAUM: That is my offer now, the purpose of my offer, why I think it is admissable.

THE COURT: I just want your reason. We will give you an opportunity to argue this.

MR. TEITELBAUM: I intend to prove this was a part of the same design, scheme or plan as was used, that the same design, scheme or plan as was used in the instant case was also used in that case.

I offer it further for the purpose of proving motive, intent and lack of accident or mistake. I point out to the Court that the defense has now been put in. The same offer was made in our opening in our case in chief. At that time the Court ruled that it would not be admitted at that time but could be re-submitted in rebuttal.

MR. CASEY: It is not necessary—

THE COURT: Just a moment. If you will go back to see my ruling on it, you will find that I said at this time your offer is denied or refused.

MR. TEITELBAUM: I see. All right.

THE COURT: I said nothing about rebuttal in the record.

MR. TEITELBAUM: All right, sir. I am not trying to use anything along that line. I meant to say that now the defense has put in evidence through two witnesses, in addition to Stirone, and all three of whom have contended that this was a legitimate business transaction. In effect they claim it was a commission paid to Stirone for obtaining a contract for the sale of ready-mixed concrete by using his influence with Ragnar Benson. Mr. Dierker and Mr.

Kassab have an aura of respectability about them.

MR. CASEY: I presumed them to be respectable.

MR. TEITELBAUM: Mr. Dierker has corroborated Mr. Stirone. He has corroborated him in the principal contention that he makes. Mr. Kassab has added a certain verity to it. Therefore I submit that the circumstances are quite different that when the Court ruled originally and that now it becomes not only relevant, it always has been relevant, but now it becomes very important that the Court permit this to go in evidence as it is the Court's discretion to do so, that the jury may have the entire picture of this situation and type of picture and not of an isolated instance that occurred separate and apart from the entire behavior of the man Stirone.

MR. CASEY: If the Court please, the indictment that this defendant is called on to meet is extortion on a day certain or within a period certain. I object to the offer as being res inter alias acta, an independent crime which would only tend to prejudice the defendant in the eyes of the jury and having no probative value as far as the proof under the indictment is concerned.

(Discussion off record.)

MR. CASEY: It is further objected as this witness produced here will be a prosecuting witness in an indictment in the United States District Court for the Western District of Pennsylvania concerning which the United States Attorney made a motion to consolidate indictments for trial and which motion is refused by Judge Herbert Sorg.

It is further objected to on the basis that to permit this testimony, that the defendant would be unable to meet the testimony of the witness with-

out extended investigation and in order to prepare a defense to a separate and independent matter.

MR. TEITELBAUM: May I put on the record we have no prosecuting witnesses in Federal Court. The Government is the prosecuting party in all cases.

MR. CASEY: I mean or prosecuting witness.

THE COURT: Members of the jury, we will at this point adjourn for lunch until 1:45.

(Whereupon a recess was taken until 1:45 p.m.)

(Change of reporters.)

AFTERNOON SESSION 1:45 p.m.

GEORGE THOMAS DOHERTY resumes the stand.

MR. CASEY: May we see the Court at side bar, please?

THE COURT: Certainly.

(At side bar)

MR. CASEY: In relation to the offer as far as the witness Doherty is concerned, I would like to add to my objection the fact that there had been a previous objection filed by the defendant relating to the same matters, the offer of the Government, which was sustained by Judge Sorg on the objection to the consolidation, on the same basis.

THE COURT: Now, for the purpose of the record, the defendant's objections to the testimony of Mr. Doherty will be overruled.

Direct Examination (continued)

BY MR. TEITELBAUM:

Q. Mr. Doherty, where are you from?

A. Dearborn, Michigan.

Q. What is your business?

A. I am in the demolition business.

Q. Now, for the benefit of the members of the jury and myself, what is the demolition business?

A. The wrecking business, demolishing buildings, removal of buildings and structures.

Q. Now, back in 1952 did you have a contract for demolition in the city of Pittsburgh?

A. I did.

Q. And what did you contract to demolish?

A. The Carnegie Building, for May Department Stores.

Q. Do you recall when in 1952 that was?

A. The middle of March of 1952.

Q. And is that when you undertook your work, commenced your work?

A. Yes, I did; approximately.

Q. After your arrival in Pittsburgh to undertake that work did you meet the defendant, Nicholas Stirone?

A. Yes, I did.

Q. Will you tell the Court and jury what the circumstances were under which you met Mr. Stirone?

A. I was approached by Mr. Al Buncher of Buncher Scrap, which I had contracted to sell the scrap iron from that building, and I was told by Mr. Buncher that Mr. Stirone wanted to speak to me. And I made the appointment with him at the—at a club room over at the William Penn. And at the time we arrived, that is, Mr. Buncher and myself, Mr. Stirone was in the club room, with the doors closed. It was a—well, a club room, but it was a private room, it was not open to the public there. And I was introduced to Mr. Stirone, and he asked me if I had spoke to anybody in regards to the contract on the Carnegie Building—

Q. Now, Mr. Doherty, did you know who Mr. Stirone was?

A. At that time I was told who Mr. Stirone was.

Q. Proceed.

A. And I was asked by Mr. Stirone if I had spoken to anyone in regards to the bid on the job. And I said, "No. I am individually operating in this town, and I feel that my own judgment is what I rely on." He said,

"Well, you know in this town here"—he said—"before you submit a bid you should talk to other people, rather than just taking it upon yourself to just move into this town." And I said, "Well, I see no reason why I should. In ten years I have been operating, I felt if I cared to bid on a job I bid on it, and it was up to me to do the job and no one else." And he said, "Well, you know I have a price tag of thirty-five thousand dollars on that job." I said, "What do you mean, thirty-five thousand dollars?" He said, "Well, the contractors here and myself have made an agreement that there is a thirty-five thousand take on this job." I said, "Well,"—I said—"what do you want from me?" I said, "I haven't received that amount in contract price to do the job." "Well," he said, "it is too bad that you didn't speak to me first." I said, "Well,"—I said—"I see no reason why it is too bad." I said, "I've got to do the job and no one else." He said, "Well, in this town you talk to me first." I said, "Well, what do you want from me?" "Well," he said, like I said before, I've got a thirty-five thousand dollar price tag on that job." I said, "Well, I think you've got rocks in your head if you are looking for thirty-five thousand dollars from me." And after that statement was made he said, "Well,"—he said—"you are a pretty cocky little guy, aren't you?" He said, "Maybe we can teach you a few things a little bit differently. And I said, well, I would have to be shown. And I walked in this town with the attitude that when I cared to undertake my work I would do it myself, and that is exactly the way I felt when I walked out.

It was shortly after that time that my opinion was changed, due to the labor they was supplying me, due to the circumstances on the job and what did occur on the job. I felt that it was only "go his way or go broke". I had $270,000 performance bond on the job. I was tied up to a point where I could not say, "Well, I can not perform your contract." I had everything that I had

earned throughout my life tied up in this thing.

So about seven or eight days after I did start Mr. Al Buncher approached me again. He said, "George, have you changed your mind in any way?" I said, "Well, I will listen to reason." So there was another meeting, which Mr. Stirone did not attend. But the price was reduced from a thirty-five thousand dollar cash payment to a ten thousand cash payment. I did agree to pay ten thousand dollars, but I could not pay it in cash. And my labor troubles were to be taken care of immediately upon me agreeing to pay ten thousand dollars. I consented to pay in the form of the metals from the job. The metals consisted of approximately forty thousand dollars worth of copper, brass and lead. And it was agreed that I send my metals to the Buncher Company, which had purchased the scrap metals, as well as all the iron, from this job. And they were not to give me shipping receipts; it was to be on a piece of scrap paper only.

Q. Now, did Mr. Stirone agree to that?

A. Mr. Stirone did agree to that. It was understood between Stirone, Al Buncher and myself.

Q. I see. And did you do that?

A. I did do that.

Q. Thank you.

MR. TEITELBAUM: You may cross examine.

CROSS EXAMINATION

BY MR. CASEY:

Q. Were there any members of Local 1058 on that job?

A. 1058—the Local that was involved at the time was 178. And Mr. Stirone was—I had occasion to meet at the Local 178 office, and he was sitting behind the desk of that Local the second time I met Mr. Stirone.

Q. What sort of labor union was involved? What sort of craft?

A. The general labor. They have it classified here, I believe, under demolition or wreckers.

Q. And where was this place you say you saw Mr. Stirone behind a desk?

A. At the office of 178, I believe that Local was at the time.

Q. Do you know where it was?

A. Yes, sir. One block beyond Grant Street, a little bit to the left.

Q. Off of Fifth?

A. Off of Fifth, yes, sir.

Q. Off of Fifth.

A. Yes, sir.

Q. And when was it that you were over there and saw Mr. Stirone behind the desk?

A. Possibly the middle or the latter part of April. I am not sure of the time, but I know—I can say definitely that it was shortly after I had first met Mr. Stirone at the club room of the William Penn.

Q. When you were at the club room of the William Penn were you a guest of the hotel at that time?

A. I don't think I was. I believe I arrived in town here on a Monday morning, and I had not yet taken my room.

Q. Between that time and the next time, that you say you saw Mr. Stirone sitting behind a desk at Local 178, were you registered in the Hotel William Penn?

A. No, sir, I don't believe I was. I believe I took an apartment out on Winebiddle.

Q. And do you know the number there, please?

A. No, I don't, sir.

Q. Was it an apartment building with more than one apartment in it?

A. Yes, it was.

Q. And during that time, when you say you saw Mr. Stirone at Local 178, is when you lived—took an apartment out on this other street?

A. I cannot be sure when I took that apartment, sir; I believe it was at that time.

Q. Now, when you say you met Mr. Stirone at the William Penn Hotel did he introduce himself, or how was he introduced to you?

A. Mr. Buncher—Mr. Al Buncher introduced Mr. Stirone to me at that time.

Q. And you didn't know him before that?

A. No, sir.

Q. Did you have the contract on the building at that time?

A. Yes; yes, I did, sir.

Q. To demolish it?

A. Yes, sir. I was not approached by Mr. Stirone or Mr. Buncher until after I had put up my performance bond. I was not approached by Mr. Stirone, through Mr. Buncher, until after I was tied up to a point where I couldn't back off.

Q. And whom did you deal with—what company was it? The U.S. Steel Company?

A. No, sir; May Department Stores.

Q. And what was the date of that contract?

A. Approximately March 23 of 1952, or the 6th of April.

Q. Now, when Al Buncher—did he take you to this club room over at the William Penn Hotel? Did you know whom you were going to meet there at the time?

A. Yes, I did. I was told I was going to meet Mr. Stirone at the club room there

Q. Were there any other persons present except you three?

A. No, sir.

Q. How did you happen to meet Mr. Al Buncher at that time?

A. I had sold Mr. Buncher the scrap from the Carnegie Building.

Q. Before you had removed it?

A. That's right.

Q. During the time that there was any conversation concerning price tag—where was this held, and how did it occur?

A. It was held in the club room there.

Q. Was it at a table or was it a bar—

A. No, sir, it was not a bar. It was a club room, I believe with lounge chairs around the outside wall, and magazine racks and lamps; I mean just a nice, comfortable room.

Q. Were you standing or were you seated? And if so, how were you located, and how close to each other?

A. Well, it was—as far as distance is concerned, it was within a distance we could carry on a conversation, a business conversation, not too loud, not too quiet.

Q. Who is "we"?

A. Mr. Stirone, Mr. Buncher and myself.

Q. So that each of you could hear the other?

A. That's correct.

Q. Wha ttime of day was it, do you remember that?

A. I believe it was shortly after lunch. I can't be sure of the time, but I believe it was shortly after lunch.

Q. Did you have your lunch at this place?

A. No, I didn't.

Q. Did you have your lunch with Mr. Buncher that day?

A. No.

Q. Where did you meet Mr. Buncher?

A. At the wrecking operation.

Q. And then you walked from there over to the William Penn Hotel?

A. I did.

Q. Had any of the wrecking operations started at the time of this meeting, as far as you were concerned?

A. Oh, yes.

Q. What had you done?

A. Well, we commenced stripping the building with labor that I had brought in from Michigan. I had four men with me, and I believe I had hired a couple of men from the Local here, and we had started to remove doors, the office partitioning, and the like.

Q. And how did you arrange for the hiring of those four men from the Local?

A. Upon bidding, I had called up the Local and inquired in regards to wage rates, conditions; and I had heard previous to my calling that Pittsburgh was a pretty tough town to get along in, and—

Q. You mean then you called from your home?

A. No, sir; right here.

Q. After you got here?

A. I was here from—I came in originally to bid this job in January of 1952, possibly before that, and it took approximately two months or better for research in regards to contents of the building; and at the time that I originally entered Pittsburgh the Carnegie Building was still in operation, and I looked through the building—after checking the building over, along with the assistant that I had with me, I went to the engineer's room in the basement, got the original plans of the building, also the remodeling plans, and took out the figures so far as quantity; and every detail of the building that I could possibly gain, before I submitted my bid.

Q. And on that first occasion when you came here in January, when you were doing all this did you come in contact with Al Buncher?

A. No, I did not.

Q. When did you first come in contact with him?

A. Only after I had contacted the Alpha Steel—and also a Mr. Goldman—which operates a scrap iron place either here or in Monongahela. And it was only after I was talking very seriously in regards to the sale of scrap

to outside people, because I thought I could do a little bit better than I could possibly locally; and it was only within two days of closing the deal with Alpha Scrap, I believe—I am not sure of the name of the company I did contact, but it was the competitor of the Buncher Company—and we were ready to close the deal, terms and conditions were satisfactory to me, and for a reason unbeknown to myself the deal stopped very abruptly.

Q. You mean the negotiations between you and the May Company?

A. No, sir; I already had a contract with the May Company. It was the negotiations that I had with the Scrap Company.

Q. Well, what was the purpose of those negotiations?

A. To sell them the scrap.

Q. Oh, I see; I am sorry. And they stopped?

A. Yes, sir. Everything—

Q. And that was not with Buncher?

A. No, sir. That was with Alpha Scrap, or Goldman Scrap. I was with them, a matter of signing my signature to the deal, a fifty-thousand dollar certified check they had on hand, and something happened. What it was, I don't know. I did hear later, but it is only hearsay, what had taken place and the reason why they did not purchase the scrap or go through with the deal. And then the Bunchers wanted to know why they did not have the opportunity to buy too, and I did talk to them, and I did eventually sell the scrap to Buncher.

Q. Did you have a written agreement with Buncher Brothers?

A. I did.

Q. Can you tell me what time that agreement was entered into?

A. It was sometime between the signing of the contract with May Department Stores and the time I commenced work there.

Q. And you say at the time you saw Mr. Stirone at this club room in the William Penn Hotel, that was after the date of your starting to demolish that building?

A. Very shortly thereafter, yes, sir.

Q. Now, was that the only conference you had with Mr. Stirone was on that occasion?

A. No, sir.

Q. After the occasion in the William Penn Hotel, in the club room, of which you speak, when was the next occasion of your talking with him?

A. At the office of Local 178.

Q. Who was present then?

A. Mr. Stirone, I believe Mr. Huff.

Q. Would that be Larry Huff?

A. That's correct.

Q. Is it a colored gentleman?

A. Yes, sir.

Q. Now, how long after the time at the William Penn Hotel was that?

A. Six weeks—six weeks to two months.

Q. Two months?

A. Six weeks to two months.

Q. And then when was the next conversation you had with Mr. Stirone?

A. After that, none.

Q. Just those two conversations?

A. Yes, sir.

Q. Now, on the first conversation you say there was mention of price tag. Is that right?

A. That's right.

Q. Now, on the second occasion there were only the three, at this Local 178?

A. That I can remember

Q. And no one was with you, none of your firm or either of the two Bunchers?

A. I was brought over to Local 178 by request.

Q. And whom did you go with?

A. I believe I went with Mr. Huff, or one of the representatives of that Local.

Q. Where did you go from——

A. From the Carnegie Building. I walked over to the Local hall.

Q. What time of the day was that?

A. I do not remember.

Q. Well now, at that time over there was any mention made of price tag?

A. Price tag, no. I was asked if I had learned that I was not cocky as I thought I was when I originally entered town. And I said, "Well, I have learned a few things, but so far as how I feel about them I will keep that to myself until later."

Q. How far along had the demolition of the building progressed at that time?

A. To the point where the penthouse portion of the building was removed, which was done in a matter of two and a half to three weeks, and at the point where there was ten thousand dollars worth of metals delivered to Buncher.

Q. That is, the metals which you say—copper, brass and lead?

A. Yes, sir.

Q. Is that all that was delivered to Buncher, just that type of metal?

A. There was concentration directed strictly on the metals, in order to pay Mr. Stirone.

Q. And that was the nonferrous metals?

A. That right.

Q. And was that copper, brass and lead delivered to the Buncher Brothers; and if so, how?

A. It was delivered to the Buncher Brothers on truck, on their truck.

Q. On their truck. And you don't know where it went to; it moved out of your—

A. I knew where it went to.
Q. How did you know that?
A. It went to the Bunchers' yard.
Q. And where is that?
A. Over on Shore Avenue.
Q. On the North Side, Pittsburgh?
A. That's right.

Q. Well now, after the visit to 178, now long after that was it before you were approached by Al Buncher?

A. Al Buncher continuously, without a let-up, had contacted me—well, just repeatedly, after I had paid the original ten thousand dollars in metals. There was also, after the starting of the job, a large article in the paper in regards to the removal of the building, and we had papers over at the office at the time, and I don't know the exact date the picture appeared, but the newspapers took the complete picture of the building, and the historical points of it, and also a write-up on the fact that I was from Dearborn, Michigan, and what I had thought of the building and how I intended to demolish the building. And Mr. Buncher had came in probably eleven or eleven-thirty that very day that this article appeared in the paper, and he took his pencil out of his pocket and he put "$50,000" on the upper part of this paper. And I said, "What's that for, Al?" "Well," he said, "that's what it cost you to explain what is happening to the metals and your iron from this building." And I said, "Why?" And he said, "Well, the iron workers will be in on you." "Well," I said, "I can probably do better with the iron workers than I have been able to do with the laborers, irregardless."

Well, that was as far as that went. And Mr. Buncher —after receiving the metals, I asked him if Mr. Stirone had received his money. He said yes. He said "Everything is satisfactory." I said, "Do you mean to tell me I am going to be able to tell the laborers what to do now and have it done?" He said, "I see no reason why not."

Well, it was shortly thereafter that time that that is when I did go over to the hall, because I had a complaint in regards to the performance of the laborers that I had had supplied, by Local 178, and I was told at that time that ten thousand dollars was only the cash payment. I said, "So what do you want from me?" And that is when it was brought up indirectly that the job was marked for a thirty-five thousand dollar shakedown.

Q. And did Buncher say that?

A. No, sir. Mr. Stirone said that.

Q. That is, on the first occasion?

A. The second occasion.

Q. At the Union office?

A. That's right.

Q. Now, you had two conversations concerning thirty-five thousand dollars, then?

A. In a roundabout way. It was very definitely there in the club room. From there on out there was nothing definitely established to me in regards to what Mr. Stirone had to say to me, it was always roundabout. It was leading to it, do any way you want. And that is exactly the way it was put to me.

Q. On this second occasion, in this Local 178 office, where was this desk that Mr. Stirone was behind?

A. As you walk in the building you enter a flight of stairs which leads straight up, if I am not mistaken. I made a turn to my left, and the office is to the left of the stair well as you walk in, over to the left, facing this wall (indicating).

Q. As you get to the floor that you want to be on you turn to the left to be in the office. Is that right?

A. I recall that the office was to the left, if I am not mistaken.

Q. And was there only one office there and only one desk, or were there other employees around?

A. In the office that I entered there was no one else there but Mr. Stirone in that room.

Q. Was that—as soon as you come in off the hall, was that the room where you found this desk and found Mr. Stirone?

A. That's right. There was a lot of laborers out in front of the building and also in the hall of the building.

Q. On the stair well?

A. Yes.

Q. And after you got up there you opened the door, and inside was a room with a desk in it, and Mr. Stirone was in there by himself; and you came over there with Mr. Larry Huff?

A. I believe it was Mr. Huff. I can't be certain who I went in there with, but I know it was a representative of the Local at that time.

Q. And at that time there was talk again about thirty-five thousand dollars?

A. There was talk on being satisfied with the ten thousand payment, that it was received. And there was roundabout discussion about "What about the rest?"

Q. And did you accede to it at that time?

A. No, definitely not. I never discussed it any further than that, other than the fact that I just couldn't see it. I received the contract price, and the asking shakedown was in excess of the contract price.

Q. And that was after you had signed this agreement with the Buncher Company?

A. After I had made my commitments, both to the May Department Stores as well as selling the scrap to the Buncher Company.

Q. Now then, it was after that time then that you say Buncher came to you and you had another conversation with him about the copper, brass and lead, which you say was to go to Buncher at free, and there would be no invoice for it and no payment made by Buncher to you?

A. I made the statement that all my copper, brass and lead was the actual aim of Mr. Stirone and Mr.

Buncher; that was the shakedown price.

Q. Now, did Buncher get other metal out of it than the brass, copper and lead?

A. They received all the iron from the building, structural steel as well as the scrap iron. It came pretty close to four thousand ton.

Q. Well, at that time when you started you had a demolition permit from the City of Pittsburgh, whatever was necessary.

A. (Witness makes no answer).

Q. Now, so I have this clear in my mind: It was Al Buncher and you that made the agreement relative to this copper, brass and lead going to Buncher on behalf of Nicholas Stirone. Is that it?

A. I beg your pardon?

Q. I said, was the agreement reached between you and Buncher—Al Buncher you say — that was the agreement reached between you and him, that the copper, brass and lead, and nonferrous metals from the Carnegie Building, was to go to Buncher Brothers' North Side yard, and they weren't to pay for it, but they were to pay Mr. Stirone. Is that it?

A. With the approval of Mr. Stirone, yes.

Q. And you and Buncher made the agreement?

A. Along with Mr. Stirone.

Q. Where was Mr. Stirone then?

A. In the club room.

Q. At the first meeting?

A. That's right.

Q. And was the only time the question of copper, brass and lead, the nonferrous metals, was discussed on the original occasion?

A. The original occasion cash was discussed. There was no such thing as talking about the metals. I mean he wanted cash.

Q. Now, when were the metals discussed?

A. The metals were discussed after I had refused to write out a check for cash and take it to the bank and cash it, bring my money back.

Q. Was that on the first occasion?

A. That's right.

Q. That was in the presence of Al Buncher?

A. That's right.

Q. Now, when you refused to do that who brought up the question of copper, brass and lead?

A. I believe it was discussed, both with me, if I was willing to go along with the delivery of my metals and Mr. Stirone receive the cash from those metals until he was satisfied.

Q. Did you and Mr. Buncher discuss about that?

A. Yes, sir.

Q. And you didn't agree at that time?

A. Not originally, no. It took about—oh, six weeks to bring me around to the payoff

Q. And you were brought around by Mr. Buncher?

A. No; by the activities of the labor that I was supplied with.

Q. On the job itself?

A. That's right.

Q. Did you then voluntarily say—or go to Mr. Stirone or Mr. Buncher and say, "Go ahead with that arrangement"?

A. No, sir. They kept asking me how things were.

Q. Who kept asking you?

A. Mr. Buncher, speaking for Mr. Stirone.

Q. At any rate, it was Al Buncher who was doing it?

A. He was asking me how things were coming, and he was always adding the fact that Nick would like to know how things are going.

Q. Why would you sign a contract with Buncher? You were sending him your metals anyway.

A. I was sending my metals, yes.

Q. You were sending your nonferrous metals, copper, brass and lead, during that time?

A. No, sir. It was only after the point—originally, when I started to wreck, I had labor that was not removing the brass, lead or copper. It was only after the fifth or sixth week, when I started to hit the roof of that building, when I could actually tell what the labor was or was not going to do. And after judging their performance of what I asked them to do—what I directed them to do, the labor was lagging to a point where either I had to go along with the demands or I just had to say to myself I might as well quit now. And only then did I consider the shakedown metals, only after I agreed to pay off.

Q. But you stored it in your building?

A. No, sir. There was no metals produced from that job. I was stripping the floors, the casings, the doors, the plumbing, office partitioning, and that was all being removed from the penthouse floor right to the main lobby

Q. Well, that labor wasn't up to the standard which you had been accustomed to. Is that it?

A. Definitely not.

Q. Well now, when you finally came to the point of giving your assent to this arrangement, as you say, just tell me again how that came about, who said it. How was your assent carried out, and how did the first copper, brass and lead move to Buncher Brothers, how soon after?

A. Well, it was through the checking of Mr. Al Buncher to find out my position that I had taken and to find out if I had changed my mind during the course of my commencing to actually get into the demolition of this building, because I had to prepare bridges, scaffolding and fans and such on the building, that it did take quite some time to set that up. So actual production of metals was quite some time after I had spoken to Mr. Stirone in the club room of the William Penn. So therefore there was no question of me shipping metals of any kind. It took

quite some time to set up the job before that could be done.

And I had labor at that time—like I say, I brought men from Detroit, and also I hired men from the Local hall, and the men from the Local hall, there was good, there was bad—I mean that goes with all labor. And it was at the point where I was ready to move—where the labor was not ready to go along with my request. And only then did I find I had a pressure. I mean when a man is in the contracting business he can tell when pressure is put on him. There was definitely pressure put on me.

Q. You mean from the laborers themselves?

A. From the laborers themselves.

Q. What about Al Buncher?

A. Well, he was always asking me how things were going. He was keeping very close touch, to—am I ready to break or am I ready to go some more?

Q. And then there came a time when—

A. When I was broke.

Q. Yes. And did you tell Al Buncher?

A. I told Al I was ready to go along with Nick's demands.

Q. And what did Al say?

A. Al says, "Okay. Let's go."

Q. Meaning—

A. That is when the metals started to go out.

Q. After you told Al you were ready to go the metals started moving over to Buncher Brothers?

A. About six weeks.

Q. Now, did you bill, or did you send over an invoice, so much per pound or ton?

A. No; I sent a man along with each and every truck.

Q. And that man, was he your foreman?

A. No; he was the office man.

Q. What was his name?

A. Bernie Smith.

Q. Where does he live?

A. I do not know.

Q. Was he one of the men you brought from Detroit?

A. No, sir.

Q. How long after you were in Pittsburgh was it that you hired him, if you hired him?

A. Shortly thereafter.

Q. How old a man was he?

A. Around twenty-five, twenty-six.

Q. Where would your payroll records be for the year 1952?

A. In Detroit.

Q. Do you keep Social Security numbers and keep those records of your employees?

A. I do.

Q. As far as Bernie Smith is concerned, now you don't know where he is?

A. No.

Q. How long after you left Pittsburgh did he sever relations with you?

A. Bernie left approximately a month and a half to two months before I completed the job.

Q. What did he do? Join the Service or something like that?

A. No. He knew the shape that I was in, and his wages were hurting me at the time, and he obtained work elsewhere.

Q. What were you doing, losing money on the job?

A. Continuously.

Q. That is that job that had the spiral staircase well up at the top?

A. That's right

Q. That was a difficult job too, wasn't it?

A. Not too bad.

Q. You had had lots of experience in the demolition business before you got to that point?

A. Reasonably, enough to know what I wanted. I knew what I was doing.

Q. At any event, during the course of your labor difficulty Mr. Buncher kept inquiring how you were doing, and finally you told him that you were ready to pay ten thousand dollars. Is that what you said?

A. Mr. Buncher was asking me if I was ready to come around to the demands. It wasn't a case of me willingly saying, "Well, here, Mr. Buncher, you can deliver ten thousand dollars to Mr. Stirone." It was a case of me being forced into a play and I had no choice—because I had ten years' work behind me, $270,000 performance bond, that I had my home and everything I owned put up in order to perform that, because that is something that we definitely and positively do on every contract you sign, that you have to put up a performance bond, that we guarantee our work to be done.

Q. In any event, sir, your arrangement concerning the sending of the nonferrous metals, the brass, copper and lead, to Buncher Brothers for free as far as you and Buncher Brothers were concerned was between you and Al Buncher. Is that right?

A. And Mr. Stirone.

Q. In the first two instances, at the club and at the Union hall?

A. To put it, and the only way I understood the deal at the time, in the way it is put: You are serving as a spokesman for a man now. Mr. Buncher was then serving as spokesman for Mr. Stirone. Now, I am putting that that way to you, and that is the only way I can decipher what was occurring at the time I was being taken for a ride.

Q. So the negotiations when you were being taken

for a ride—as you put it—were carried on through Buncher and by Buncher?

A. That's right.

MR. CASEY: that is all, sir.

Redirect Examination

BY MR. TEITELBAUM:

Q. Was Stirone present when they were being carried out?

A. He was present at two occasions only.

Q. Thank you.

Recross Examination

BY MR. CASEY:

Q. On those two occasions, was Mr. Buncher present on those two?

A. No, sir; only one.

Q. The first one, at the William Penn Hotel?

A. Correct.

MR. CASEY: that is all.

ANDREW HAWTHORNE, a witness called by the Government in rebuttal, having been duly sworn, testified as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. Mr. Hawthorne, what business were you in in 1952?

A. Demolition business.

MR. CASEY: What is his name?

MR. TEITELBAUM: Oh, I'm sorry.

Q. State your full name.

A. Andrew Hawthorne.

Q. And your residence?

A. Philadelphia, Pennsylvania.

MR. CASEY: May I have now an offer on this man?

(At side bar)

MR. TEITELBAUM: I intend to show by this man that when he came to Pittsburgh Nicholas Stirone—he met Stirone, Stirone asked him for money, and he gave him money.

I want to point out that there was no threat made to this man at all, and he states that he gave him the money because he knew that it was a shakedown, and he knew what was happening to Doherty down the street. That is his testimony.

THE COURT: For what purpose do you offer it?

MR. TEITELBAUM: For the same purpose as I offered that of Doherty.

MR. CASEY: May I have the same objection as to the previous witness?

THE COURT (to reporter): Will you note for Mr. Casey the same objection to the testimony of Mr. Hawthorne that he put on the record to the testimony of Mr. Doherty? And the Court will overrule the objection.

(In open court)

Q. By whom were you employed in 1952?

A. By Robert Hawthorne, Incorporated, contractors.

Q. Do you know who owns the Robert Hawthorne, Incorporated?

A. Yes, sir; my father.

Q. And did Robert Hawthorne, Incorporated, to your knowledge, have a contract in Pittsburgh?

A. Yes.

Q. What was that contract?

A. To demolish the Peoples Gas Company building and a group of buildings between Fifth and Sixth and between William Penn Way and Smithfield Avenue, where

now stands Mellon Park and the parking garage.

Q. And what did you have to do with that contract?

A. I was the estimator and general superintendent.

Q. And do you recall when in 1952 you started that job?

A. Yes; just about July.

Q. After you came to Pittsburgh and undertook your task did you meet Nicholas Stirone?

A. Yes.

Q. Did Mr. Stirone ever ask you for any money?

A. Yes.

Q. Did you give him any money?

A. Yes.

Q. How much?

A. A thousand dollars.

Q. And was that the total sum that you gave him while you were here?

A. No. That was the biggest lump. There was several thousand dollars that we gave to Mr. Stirone.

Q. Why did you give it to him?

A. Well, the reason for it was, as Mr. Stirone put it—it was always a reason, whether it was for welfare fund, for political purposes, or for some reason. There was always some—

Q. Why did you give it to him?

A. Well, I gave it to him because I felt that I had to.

Q. Why did you feel—

A. Well, I had heard that—in fact I had seen—I could look down the street and see Mr. Doherty's job, and I seen the procedure of the work, and I thought it would be best to go along with the crowd.

MR. TEITELBAUM: You may cross examine.

Cross Examination

BY MR. CASEY:

Q. You thought it would be best to go along with the crowd?

A. Go along with the routine, sir; you know.

Q. Is your name Robert—

A. My name is Andrew Hawthorne.

Q. Andrew Hawthorne?

A. Yes, sir.

Q. And who is Robert Hawthorne?

A. It is my father.

Q. And what is your company?

A. Demolition contractors.

Q. And where do you live?

A. Philadelphia, Pennsylvania.

Q. And you say you are vice president and superintendent—

A. At that time I was, sir; not any longer.

Q. You are not now?

A. No.

Q. Well, how does it come that you met Nick Stirone?

A. I met Nick through a friend, through a mutual friend.

Q. Who was that?

A. A fellow named Joe Labovitz.

Q. And who was he?

A. At that time I believe he was in the scrap and steel business in Philadelphia. I might have met him with Nick or at one time Nick sent for me to come to his office. I met him in his office also.

Q. Now, you tell us here that you gave Nick Stirone a thousand dollars for political purposes or matters such as that.

A. I don't remember, Mr. Casey, just how that was stated. At that time I do know there was—I don't know whether it was—I think it was a Presidential election going on, or something like that, and I am pretty sure that is what it was—

Q. You understood it was a political contribution?

A. That's right. Either that, Mr. Casey, or something along those lines. I just don't remember which. it was that or welfare fund. It was one or the other. I just don't remember.

Q. But it wasn't any money to go personally to Mr Stirone, was it?

A. Mr. Stirone didn't say that, no.

Q. He never said it was money personally for him?

A. No, he didn't.

Q. You say for those reasons, such as welfare or political, you gave him several thousand dollars?

A. Yes, sir.

Q. Now, what was the occasion of how that came about? Were you pretty friendly?

A. Well, friendly as far as labor conditions were concerned. We were doing a job there, and Mr. Stirone was as far as I know, was the boss. I used to have lunch at the William in a little room And pretty friendly, I would say.

Q. Why did you say you felt you had to give him this money?

A. Well, about that time Mr. Doherty was raising a little Cain, and I just thought it would be best to go along.

Q. And there were no threats or intimidation made to you?

A. No.

Q. Mr. Stirone just asked you for the money and you gave it to him?

A. That's right.

Q. Now, at that time you were down on the Point demolition. Is that right? The Point Park.

A. No. We had just about finished nothing happened on the Point. There was no—I hadn't met Mr. Stirone until just about the end of the Point job and pretty near the beginning of the—

Q. Mellon Park.

A. Mellon Park.

Q. And how long had you been in Pittsburgh before you met Mr. Stirone personally?

A. About eight months.

Q. Well, how did you come to meet him?

A. I believe the first time I only came to the job about once a week up here; I had a superintendent running the job. To the best of my knowledge, the first time I met Mr. Stirone was toward the end of the Point Park job or just at the beginning the both jobs ran right into the other.

Q. What was the occasion of meeting him? Did you have any reason?

A. No, nothing special at that time; outside of Mr. Stirone told me to be sure the next time that I do any work to see him in regards to labor, and so forth, and I said that I would.

Q. Well, didn't you go to him and ask him to see if he couldn't get you some good men for demolition jobs?

A. No. We had our men was all right. I didn't have to go to Mr. Stirone.

Q. You never mentioned that to him at all?

A. No.

Q. Did you have much of a conversation when you first met Mr. Stirone, how long it was?

A. No. The extent of the conversation was confined to the job, and a meeting as far as labor and rates and contract was concerned, and that's about the extent of it.

Q. Well, who was the Union man that would take care of your job over at the Point Park or the Mellon Park?

A. Larry Huff was the Union's representative.

Q. And he would go down to the job regularly, and you didn't have any trouble on that job, did you?

A. No, sir.

Q. Well, as I gather your testimony now, sir, Nick Stirone just asked you for money for political or other reasons, no demands made on you?

A. No, no demands.

Q. And you weren't paying—were you paying that money under fear of losing?

A. No. I was paying the money because it was—I paid it, that's all.

Q. And you paid it because Mr. Stirone asked you for the purpose that was involved?

A. That's right. There was always a reason for the money.

Q. And that reason was it was to go to Nick Stirone personally?

A. No. Stirone made that point, that the money wasn't for him personally.

Q. But it was for some cause?

A. It was for some purpose other than Union activities.

Q. Now, Mr. Hawthorne, do you recall being in Pittsburgh on January the 23d, 1956?

A. I don't recall, but I could have been.

Q. Do you recall of going to a lawyer's office and giving a statement relating to Nick Stirone and any transactions you might have had with him?

A. I recall going to a lawyer's office. The conversation I don't remember.

Q. Were there more than one lawyer there, as you remember?

A. I remember there was two or three, I guess.

Q. And was it in the Grant Building, a building on Grant Street?

A. I believe it was, yes.

Q. Do you remember Mr. Gatz, the gentleman sitting here?

A. Yes, sir, he was.

Q. Do you remember discussing the matter?
A. Yes, sir.
Q. Was a statement taken from you at that time and then you signed it?
A. I don't remember, Mr. Casey.
(Paper marked Defendant's Exhibit "O").
Q. I show you what has been marked as Defendant's Exhibit "O", and ask you to look at the last page of that and see if you identify that as your signature.
A. Yes, it is.
Q. Would you read that statement to yourself?
A. (after short interval) I remember this fairly well.
Q. In that statement did you tell—
MR. TEITELBAUM: I wonder if I could look at the statement.
THE COURT: Let Mr. Teitelbaum look at it, will you, Mr. Casey?
(Exhibit "O" handed to Government counsel.)
Q. I ask you if what you say in there is not so.
A. Yes, it is fairly so. I don't remember too much about it, but—
Q. At that time you would have remembered more than you would now?
A. Sure.
MR. CASEY: I offer in evidence Defendant's Exhibit "O".
THE COURT: Do you have any objection, Mr. Teitelbaum?
MR. TEITELBAUM: No, sir.
THE COURT: The exhibit, Defendant's Exhibit "O", will be admitted.
MR. CASEY: That is all.

Redirect Examination

BY MR. TEITELBAUM:

Q. Mr. Hawthorne, how did you come to give that statement?

A. Well, I gave that statement on the day I come up to Pittsburgh and met Mr. Stirone. And I came—when I met Nick I met him—the fact is I had called Mr. Stirone, because we were still fairly friendly and I wanted to borrow some money back off of Nick. I was a little—borrowing of some money; I wanted to borrow some money.

Q. Did Nick give you some money?

A. Yes, he did.

Q. Do you remember—did you sign the statement about the time he gave you the money?

A. Yes.

Q. Do you remember that on December 5th you testified before a grand jury here, didn't you?

A. Yes.

Q. In your testimony before the grand jury did you say that you had given any money—that you had given money to Nicholas Stirone?

A. Yes.

Q. And in that statement did you say you didn't?

A. I don't remember saying I didn't, because I did give money to Nick Stirone.

Q. And on the day you signed that statement Nick loaned you some money. Is that right?

A. Yes, sir.

MR. TEITELBAUM: That is all.

BY MR. CASEY:

Q. That statement was taken in a lawyer's office, wasn't it?

A. Yes, sir.

MR. CASEY: That is all.

BY MR. TEITELBAUM:

Q. Was Mr. Casey there?

A. No, sir.

Q. Was it Mr. Casey's office, Margiotti & Casey?

A. It was an attorney's office, but I don't believe

it was Mr. Casey's office.

Q. Thank you. That is all.

MR. CASEY: I ask leave to read in evidence the statement (Defendant's Exhibit "O").

STATEMENT OF ANDREW HAWTHORNE

"Dated: January 23, 1956.

"My name is Andrew Hawthorne. I reside at No. 32 South Street, Philadelphia, Pennsylvania. I am 39 years of age, married, and have three children."

Mr. Hawthorne, don't leave, until we see how old you are. Where is he?

MR. TEITELBAUM: I think he took off.

MR. CASEY (addressing someone at counsel table): Would you ask him to come back in?

(Continuing):

"I am 39 years of age, married, and have three children.

"I was Vice-president and Superintendent of Robert Hawthorne, Inc. until December of 1954.

"Between approximately March 1, 1952 and about July, 1953 Robert Hawthorne, Inc. was engaged in two demolition jobs in Pittsburgh, Pa.: (1) demolition in connection with the Point Park project, and (2) demolition in connection with the Mellon Park project. The Point Park demolition clear once started about March 1, 1952 and was concluded about June, 1952.

"I first met Mr. Nicholas Stirone approximately three to four months after

Reading—Defendant's Exhibit "O"

I came to Pittsburgh to act as Superintendent of the demolition job in the Point Park project. I was then superintendent for Robert Hawthorne, Inc., and I believed Mr. Stirone was the representative of the union supplying the laborers and it was common knowledge.

"We were already engaged in the demolition work and I contacted Mr. Stirone and asked him if possible would he be sure and secure for me men who were experienced in the demolition business, especially due to the fact that we were working up high, and if we had anybody which was inexperienced there might be an accident. In return Mr. Stirone said he would try to separate the laborers from the demolition men and would get me the best men possible, and that was the extent of the whole conversation.

"Mr. Stirone did not advise me that the men working on the job did not belong to the Local No. 1958 which he represented. My discussion with Mr. Stirone was very brief.

"Mr. Larry Huff, whom I imagined was business agent of the labor union which supplied the men to take care of the work involved, visited the job periodically and made sure the men were paid up in their dues, and that they were doing a satisfactory job for the contractor, us. My complete thought was, and my foreman's complete thought was, that he was the delegate designated by the union to check on the men.

"I believed and I thought that due to the fact that Mr. Huff was a representative of the union that he was under the local labor union which was headed by, or I thought was headed by, Mr. Stirone.

"After I first met Mr. Stirone, it was only a pleasure that if he was having lunch that I stop over and say hello to him or vice versa. That was the extent of any conversation with Mr. Stirone.

"Mr. Stirone never demanded any money from me. Mr. Stirone never demanded or even asked or suggested that I give him any money, and I doubt whether he would do it with anyone else regardless because he is too big a man to do that. I am not the type to hold for this nonsense. Mr. Stirone never made any threats that if I did not pay him he would not furnish us with qualified and experienced laborers or demolition men. Never any conversation whatsoever along those lines.

"Robert Hawthorne, Inc. and/or its representatives never gave anything as a gratuity to Mr. Stirone because they thought they were indebted to him. Rather they appreciated the service he gave them without money or gratuity.

"Recently, upon visiting my sister's house she informed me that there had been a publication in the newspaper stating that I had told someone or authorities that I gave Nick Stirone a sum of money. Immediately upon being informed about this I called T.W.A., boarded a plane at 11:15 and checked into the William Penn Hotel, and

then made it my business to investigate this statement, and as of this time I have not completed the investigation but intend to.

"This statement is given voluntarily, without any threats or promises.

ANDREW HAWTHORNE

Witness:
Samuel Goldstein
Arthur D. Gatz, Jr."

Mr. Hawthorne, would you take the stand?

ANDREW HAWTHORNE, recalled, furthur testified as follows:

Cross Examination (Resumed)

BY MR. CASEY:

Q. Did you reside at No. 32 South Street, Philadelphia, Pennsylvania, at any time?
A. Yes, sir.
Q. And are you married?
A. Yes, sir.
Q. What is your age now?
A. Forty-one.
Q. And do you have any children?
A. Three.
Q. Did you--when you heard that someone said you had given money to Nick Stirone, did you take a TWA plane and come here?
A. When I heard that someone had stated—it wasn't that that I had heard, so much—someone had stated that Nick Stirone was shaking me down, or something to that effect, that is when I came up, yes.
Q. Nick Stirone never shook you down, did he?
A. No; no, Nick Stirone never shook me down.

MR. CASEY: That is all.

MR. TEITELBAUM: May we have a conference at side bar?

(At side bar)

MR. TEITELBAUM: Will the defense stipulate that Mr. Goldstein was at that time a member of Margiotti & Casey, or do I have to subpoena him?

MR. CASEY: I will call him.

MR. TEITELBAUM: Will you stipulate it right now, or do you want me to subpoena someone?

MR. CASEY: You can suit yourself.

THE COURT: Well, if you stipulate it, I will tell the jury it is stipulated. It is between you.

MR. CASEY: I won't stipulate. I am going to call him, at any rate. So I won't put it in that way.

MR. TEITELBAUM: I have no alternative. I will subpoena him then, if the defense won't stipulate to it.

MR. CASEY: I want him here myself. I would just as soon you get him as me.

MR. PALETTA: The Court can take judicial notice.

MR. CASEY: You don't intend to call him then?

MR. TEITELBAUM: Not if the judge is going to take judicial notice.

MR. CASEY: I am satisfied to have the judge take judicial notice of that. That is all right. As long as I don't stipulate.

THE COURT: Do you have any objection to my telling the jury?

MR. CASEY: No; you can take judicial notice.

(In open court)

THE COURT: Members of the jury, I just wish to state to you at this time the Court is taking judicial notice of the fact that the Mr. Goldstein re-

ferred to by Mr. Hawthorne, who just left the witness stand, was at the time the statement was taken from Mr. Hawthorne associated with the law firm of Margiotti & Casey, with offices in the Grant Building.

MR. TEITELBAUM: That is the man who witnessed this statement.

THE COURT: Yes, Mr. Goldstein is the man who witnessed the statement.

MR. CASEY: And the other man is Mr. Arthur Gatz, Jr.

THE COURT: Yes. Mr. Gatz was not associated with the law firm of Margiotti & Casey.

AUGUST C. DUVAL, a witness called by the government in rebuttal, having been duly sworn, testified as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. Will you state your full name, please, Mr. Duval?

A. August C. Duval

BY THE COURT:

Q. D-u-v-a-l-l?

A. No; one "l".

BY MR. TEITELBAUM:

Q. Mr. Duval, where did you work in 1952?

A. In Pittsburgh.

Q. For whom?

A. For Robert Hawthorne, Incorporated.

Q. What was your job?

A. I was the general foreman for the whole works.

MR. CASEY: I would like to have an offer on this man.

MR. TEITELBAUM: I thought I made an offer before, but I will make another one.

THE COURT: Do you wish another offer, Mr. Casey?

MR. CASEY: I don't recall one, Your Honor, for this man.

(At side bar)

MR. TEITELBAUM: I intend to show by this witness that at the instruction of the prior witness, Mr. Hawthorne, he mailed a thousand dollars in cash to Nicholas Stirone at the Waldorf-Astoria Hotel, New York City.

MR. CASEY: I object to it, as showing an independent crime, in connection with the previous objections.

THE COURT: Objection overruled.

(In open court)

Q. I believe you said you were the general superintendent.

A. The same thing, foreman, superintendent.

Q. On what job?

A. Mellon Square.

Q. In the course of your duties, were you ever instructed to send anything, any letter and the contents thereof, to Nicholas Stirone?

A. No letters; but I was just instructed to take and mail a thousand dollars to Waldorf-Astoria Hotel, New York, to Mr. Nicholas Stirone.

Q. And in what form did you send it?

A. Ten $100 bills.

Q. And did you put it in an envelope?

A. I put it in an envelope, registered.

Q. Addressed to Mr. Nicholas Stirone?

A. Addressed to Mr. Nicholas Stirone, Waldorf-Astoria Hotel, New York.

MR. TEITELBAUM: Thank you very much, Mr. Duval.

Cross examine.

Cross Examination

BY MR. CASEY:

Q. When was that, sir?

A. The exact date I don't remember; sometime in September, 1952.

Q. Where did you get the ten $100 bills?

A. I cashed a check made out to Cash in the Mellon Bank, my signature on it.

Q. You mean your own check?

A. I was authorized to sign checks?

Q. For the Hawthorne people?

A. For the Hawthorne people.

Q. Where did you cash the check?

A. Over at the Mellon Bank, at Oliver and Smithfield, where we had our account.

Q. Who instructed you to do that?

A. Mr. Andrew Hawthorne.

Q. Do you know where that check is? Did it come back to you?

A. No, I do not.

Q. Did it come back to the company?

A. I guess it is back at the company.

Q. You don't have it, in any event?

A. No, I do not.

Q. You are sure you sent the money?

A. Sir?

Q. You are sure you sent the money?

A. I cashed the check. It was signed by me, and I went over and cashed it and got ten $100 bills, and mailed it in the post office, registered, insured—post office right on the first floor here.

Q. In this Federal Building?

A. Yes, sir.

Q. And you say that was sometime—

A. Sometime in September, 1952, I thought, but I do not know.

Q. Did Mr. Hawthorne tell you where to send that money?

A. He said to send it to Mr. Nicholas Stirone. What for I do not know.

Q. How long after you were told that did you send it?

A. Sent it right away.

Q. The same day?

A. The same day.

Q. Where was Mr. Hawthorne then?

A. Mr. Hawthorne was in Pittsburgh at the time.

Q. Where was it he told you to do this? On the job?

A. We had a little office there on the lot while we were tearing down the Gas Building. My office was right there on the first floor.

Q. That was the Mellon Square job?

A. On the Mellon Square job, yes.

Q. There was no letter, accompanying letter, or anything?

A. No letter or anything at all; just told me to mail—get the cash and mail it, and that's all.

Q. And that was registered mail?

A. Registered mail, receipt requested.

Q. What did you you do with the receipt?

A. I don't know where that is at.

Q. Did you ever have that?

A. It came back; naturally it came back.

Q. Did it come back while you were still in that office?

A. Yes, it came back while I was in that office.

Q. Was it delivered to you at that office?

A. Delivered to me at that office.

Q. At that time where were you living?
A. I was living at the Bigelow Apartments.
Q. You are sure it didn't come back to the Bigelow Apartments?
A. I had my wife there with me; the company paid my expenses.
Q. You don't know whether you put the return address for The Bigelow or what?
A. No, it didn't come to The Bigelow. It come to Robert Hawthorne, Incorporated, right where we had our little office.
Q. Is that on Smithfield Street?
A. Oliver and Smithfield there, where the whole square job was.
Q. You got mail delivered there, did you?
A. That is where we had our company mail delivered.
Q. That is all, sir.

ALBERT L. RUSSELL, a witness called by the Government in rebuttal, having been duly sworn, testified as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. What is your name, sir?
A. Albert L. Russell.
Q. And where do you live, Mr. Russell?
A. I live at 929 Slagle Street, Johnstown, Pennsylvania.

MR. CASEY: 929 what?
MR. TEITELBAUM: Slagle Street.
MR. CASEY: May I have an offer at side bar?
MR. TEITELBAUM: Yes, sir.
(At side bar)

MR. TEITELBAUM: I intend to ask this witness, after I identify him, whether he received any instructions from Nicholas Stirone as to methods to be used in inducing them to join the union; and if so, what that was. That is all.

MR. CASEY: Objected to, as tending to show an independent crime.

THE COURT: Objection sustained.

MR. TEITELBAUM: Let me give my offer, while we are here, on Ross Adams. I intend to call Ross Adams for exactly the same purpose.

MR. CASEY: I object to that.

THE COURT: The objection will be sustained.

MR. TEITELBAUM: I want to point out in this regard that Mr. Stirone testified as to his method of unionizing on direct testimony; that on cross examination I asked him a question as to whether he had ever used any men to go out and drive people off the track. Now, I am not contesting it. I am merely saying I offer to prove it, to show that I had such evidence at the time I asked the question.

THE COURT: You still object?

MR. CASEY: Yes.

THE COURT: The objection will be sustained.

MR. TEITELBAUM: I just want to establish that I didn't go on a wild chase.

THE COURT: That is all right.
(In open court)

THE COURT: I think perhaps we better give the jury a recess at this time.
(Short recess taken at this time.)

MAX CLARK HARRISON, a witness called by the Government in rebuttal, having been duly sworn, testified as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. Will you state your name, sir?
A. Max Harrison.
Q. And your business?
A. Harrison Construction Company; I am president.
Q. And how long has the Harrison Construction Company been in business?
A. March 22, 1928.

MR. CASEY: I ask for an offer on this, please.

MR. TEITELBAUM: As soon as I identify him.

Q. How long have you been the president?
A. Since 1947 or 48, something like that.
Q. How long have you been an officer of the company?
A. Since 1929.

(At side bar)

MR. TEITELBAUM: The Court will recall on the examination—cross examination of Mr. Stirone I asked Mr. Stirone whether or not he ever paid Max Harrison any money to represent him in a labor dispute. His testimony was—and I limited it to cases where it did not involve his own employees—

THE COURT: That is, members of Local 1058?

MR. TEITELBAUM: Local 1058—and he said no, not that he could remember.

MR. CASEY: As I remember, the testimony was that you asked him whether he had ever given any contractor.

MR. TEITELBAUM: No; I asked him specifically. Mr. Casey, I want to point out something. I recognize that I raised that on cross examination, as to a collateral matter. I recognize that Stirone said "Not that I could remember." Therefore, if you object to this testimony, I will freely agree it is not admissible. But I feel I must put this man on record and offer his testimony, to show that I had a basis when I asked the question. Now, if Mr. Casey objects, I agree——

MR. CASEY: Well, I object.

THE COURT: I sustain the objection.

(In open court)

MR. TEITELBAUM: You may step down, Mr. Harrison.

May it please the Court, the Government rests in rebuttal.

GOVERNMENT RESTS IN REBUTTAL

THE COURT: All right, Mr. Casey.

MR. CASEY: If the Court please, may I again see the Court at side bar?

(At side bar)

MR. CASEY: If the Court please, at this time I move the Court that the court st nd in recess in this case for a period of time sufficient to investigate the matters relating to August C. Duval, Bernie Smith, Robert Hawthorne and George Doherty. In order to so do, I will have to locate the various people

named, the Bunchers, and the other matters, look up records, check hotel registrations, in order to prepare a defense to each separate charge and distinct crime alleged. I will be willing to try immediately, this evening, to try to locate as many of the witnesses as I can, such as Buncher. I have no knowledge of— and I came here pursuant to a letter from the United States Attorney's Office we were to try the case of United States vs. Nick Stirone, involving the Rider transaction.

MR. TEITELBAUM: May it please the Court, Mr. Casey's office has had full knowledge of the details of the Doherty matter and the Hawthorne matter since at least January of 1956, because they represent Mr. Stirone in those matters. They had a bill of particulars in both of those matters, in which they knew specifically what was involved. Obviously they made preparation, because they read here a statement which they took of Mr. Hawthorne after his testimony before the grand jury.

MR. CASEY: We don't deny we made some preparation.

MR. TEITELBAUM: Let me say another thing. This case is now at the end of its second week. Before we started, the first day, I advised Mr. Casey in the Court's presence that I intended to call Mr. Doherty and I intended to call Mr. Hawthorne. So that he has been on notice ever since that time. He knew that I called them once to the stand and offered them; he objected. Now, at that time I intended to reoffer them in rebuttal.

MR. CASEY: I never knew that.

MR. TEITELBAUM: I said it.

MR. CASEY: I never heard it.

MR. TEITELBAUM: We have been discussing them now for two weeks, we have been argu-

ing about this matter. The only thing he didn't know was how you were going to rule. And I think a lawyer trying a case over two weeks has to be prepared to try his case—

MR. CASEY: I am prepared.

MR. TEITELBAUM: —and not ask for a recess.

MR. CASEY: If the Court please, this case was the late Charles J. Margiotti's. I never heard of it, had nothing to do with it in the course of preparation of it until I was retained since the formation of a new law firm which now bears the name of Margiotti and Casey It isn't the orignial firm of Margiotti and Casey, which was dissolved by the death of Charles J. Margiotti on August 25, 1956. That since that time I have been continuously engaged in the trial of this case, intending to meet the indictment upon which we are on trial here, and I have had no opportunity to study except cursorily.

I asked, in view of the matter this morning —the first time I ever saw the statement of Hawthorne was over the lunch period, when I went to my offiices, after I had learned his name from Mr. Teitelbaum before the noom recess of the court. That is why I asked him his name again, to make sure what it was. I feel I cannot do justice to my client. I can't put the client upon the stand until I have had an opportunity to go over the matter, the testimony here, my notes of testimony or the transcribed record, and during that course of time to prepare a defense to each of the individual matters involved. I think—

MR. PALETTA: May I say something?

THE COURT: I want to get the motion on the record.

MR. CASEY: I think, in the interests of justice, I should not be compelled—now, I recognize our problem here, and I am perfectly willing to work day and night in order to get prepared to present my evidence, whatever it might be.

MR. PALETTA: This very question came up in the Rayhall trial, I think before Judge Marsh. Now, legally, on the rules of evidence, these are rebuttal witnesses we put on the stand. He wants time in order to secure evidence to impeach the credibility of rebuttal witnesses. According to law, the evidence—and I am going to look it up as soon as I leave here—he has only one way to impeach credibility, and that is by cross examination, because if you allow rebuttal witnesses to rebuttal witnesses you have a trial within a trial—

MR. CASEY: That is what it is.

MR. PALETTA: —and it can go on ad-infinitum.

THE COURT: He is entitled to offer sur rebuttal.

MR. PALETTA: Sur rebuttal to the case in chief, but not sur rebuttal to rebuttal; sur rebuttal to the case in chief

THE COURT: Off the record.

(Informal discussion, off the record.)

THE COURT: For the purpose of the record, I will not grant any continuance except until Monday morning, over the week end. That is my ruling on Mr. Casey's motion.

(In open court)

THE COURT: Members of the jury, the defendant's witnesses whom they wish to call at this time are not now available. So I think now that,

rather than try to do anything tomorrow, it is best we adjourn until Monday morning. And we will start at 9:30 Monday morning, and also run into Monday evening, so we can finish the case on Monday.

We will adjourn until 9:30 Monday morning.

(whereupon, at 3:45 P.M. on Friday, June 14, 1957, the trial was adjourned to Monday, June 17, 1957, at 9:30 A.M.)

(At side bar)

MR. CASEY: I move that the testimony of William G. Rider be stricken from the record as being at variance between the indictment and the bill of particulars, and it having no probative value and not charging nor helping to prove any crime as set forth in the indictment or the bill of particulars.

THE COURT: Motion is denied.

MR. CASEY: I move the Court to recess this case for sufficient length of time to permit the defendant with accountants or investigators to examine the books of account of the Buncher Brothers Company to ascertain all the invoices, checks and remittances relating to any scrap metal, whether ferrous or non-ferrous from the Carnegie Building from Doherty to the Bunchers.

MR. TEITELBAUM: If it please the Court, I think the record should show, the Government did not have to do this, on the first day of this trial in your chambers we advised Mr. Casey of our intention to call Mr. Doherty to the stand and testify as to other similar acts.

MR. RICH: That is not so.

MR. TEITELBAUM: He has been prepared at least since that time. Mr. Doherty has been in court every day and standing around here. Mr. Stirone well knew him.

Furthermore, there have been at least two years while this case was going through various arguments and discussions that although Mr. Casey was not presently in the matter, Mr. Rich was there, associate counsel Mr. Gatz was there. They have had more than ample time to be prepared and I think it unreasonable to request a postponement.

THE COURT: What would you gain by that anyway? What would you get from those records other than what Mr. Al Buncher and Mr. Jack Buncher have already testified?

MR. CASEY: I can trace all the materials through their books and show just exactly how much scrap metal there was and how much non-ferrous metal there was.

THE COURT: He already testified according to the records they were paid.

MR. CASEY: They were asked, by the Government, whether or not all their records would show all that.

THE COURT: If the situation is such as described by Mr. Doherty, their records wouldn't disclose anything in any event.

MR. CASEY: If it is not, it might disclose that sufficient metal passed through their books to be all of it or substantially part of all the metal in the building.

MR. TEITELBAUM: I assure Mr. Casey that Mr. Buncher and Mr. Casey and Mr. Stirone and Mr. Casey's law firm had known that the charge essentially was the same all the way back two years ago, that the metals, the non-ferrous metals were not paid for. I can assure him if Mr. Buncher had statements in his records showing he had paid for those non-ferrous metals, Mr. Casey would have been well able to present them.

MR. CASEY: No, that's one reason I am asking for a recess is because I have not had an opportunity. I haven't had a chance to do it. I was surprised by the testimony last Friday and over the week end I was barely able - I used all day Saturday in talking to Mr. Buncher and other witnesses, that I was called upon to meet in view of testimony of Mr. Hawthorne. At no time did I know Mr. Doherty, ever recall seeing him here, except when he was produced upon the stand and then the offer was objected to and sustained by Your Honor.

I was informed by a letter signed by Mr. Teitelbaum or someone from his office, I think to Mr. Levinson and to myself, stating the only case that would be called upon to be tried at this time would be the case involving the William G. Rider case.

Further than that, I was led to believe when Judge Sorg had refused to consolidate the cases upon the objection of the defendant that I wouldn't be called upon to meet that matter. The way the record stands now, I could not adequately prepare a defense relating to the charges of Doherty made upon the stand in rebuttal.

THE COURT: I have considered that since you first raised the question last Friday, Mr. Casey, and I have attempted to give you every opportunity to call witnesses whom you needed. I have adjourned two, maybe three occasions before the regular adjournment hour so that your witnesses would be available the next morning, and in thinking this matter through, I can not see wherein your client is injured in any way whatsoever by not having the records of the Buncher Company here.

MR. CASEY: If the Court please, that didn't develop until today really is the only time about the records that came about.

THE COURT: You made a request on Friday for a recess to examine records or something.

MR. CASEY: To prepare a defense and to interview all these witnesses. Today is the first time in answer to Government's question is when Mr. Buncher said that all of those matters would be in the hands of their bookkeeping people and would be available over there and that the records that I had in court here I think one of them was Exhibit T, although I wouldn't say, being a pack of checks and the remittance advices. They were not all of the records, but just taken at random from the file and that the complete records would show all of the matters that came in and went through the books of the Buncher Company.

MR. TEITELBAUM: Mr. Buncher indicated it would take at least three days to get any such records and I never heard of adjourning a criminal case for a period of three days while we have a jury sitting in the box.

THE COURT: The motion is denied.

MR. CASEY: I move the Court to strike out the testimony of the witness George T. Doherty and Andrew Hawthorne as being not proper rebuttal.

THE COURT: The motion is denied.

MR. CASEY: I am ready to rest. So I don't forget, I would like at this time to renew my motion for judgment of acquittal, so I am sure it is upon the record. I would hate not to have that on.

THE COURT: That is the same motion you made at the close of the Government's case.

MR. CASEY: I'd like an opportunity in the morning if we could—it's getting to nine o'clock now—to say a few words either in chambers—

THE COURT: I will give you an opportunity

to say a few words tomorrow morning and I will rule on it tomorrow morning.

MR. CASEY: Let the record show that the defendant rests.

* * * * * * * *

AFTERNOON SESSION 2:00 p.m.

THE COURT: Mr. Teitelbaum?

MR. TEITELBAUM: If it please the Court, ladies and gentlemen of the jury, until I heard Mr. Casey's closing, I never realized that Mr. Paletta and myself were such bad fellows. He said or inferred we want a victim, he inferred maybe we are publicity seekers. He inferred maybe that we have got some personal motive against Mr. Stirone or that we want to satisfy our personal egos.

Now, you have seen us here. You have seen us here for two weeks. I assure you Mr. Paletta and myself and Mr. Stiles of the F.B.I., Mr. Torrance of the F.B.I., the men who worked on behalf of this case have only one sworn duty. Our duty is to prosecute the guilty, those who are guilty of violating the federal law.

It's no part of my sworn duty or Mr. Paletta's or anybody else's to convict any innocent person or to try them. If any person would be innocent, we would be here asking you to acquit, not trying to convict them. In fact, if we felt anybody were innocent, we wouldn't have them here. That is our duty, we have no other.

* * * * * * * *

Think of something - Mr. and Mrs. Rider, and I want to say something about them being here this

morning and Mr. Doherty being here today, they are under subpoena to the United States Government. They have to be here until I tell them that they are now excused. As we ended up last night, somewhere around nine o'clock, Mr. Casey had just rested his case. Whether I was going to call further witnesses was not yet determined and I had until this morning to decide whether I wanted to ask Judge Miller to let me bring another one. So I didn't excuse them because I wasn't sure.

Naturally they are interested in hearing what goes on. The man lost, the man was extorted to over $30,000. Doherty was extorted to a greater amount than that. Certainly they want to hear what's going to be said. Certainly they are interested in what I am going to say and what Mr. Casey is going to say. Certainly they wanted to hear what Mr. Casey is going to say about them, but in the outcome of this case, neither of them have any interest. Remember Mr. Bergman's testimony. You know, the tailor there, the tailor that was on the stand. Mr. Bergman says that Mr. Rider said, "I have nothing against Stirone." What does that indicate? He had no hatred for Stirone. Certainly nobody likes to be extorted but what did he say and who brought it out? The defendant says he had nothing against Stirone. He had to do it or he was forced to do it.

Now, that's an indication that he wasn't bringing this about for revenge or for any other motive that Mr. Casey might have been able to think up. He was testifying under subpoena at the request of the Government to the truth and I assure you that it would have been simpler for Mr. and Mrs. Rider and for Mr. Doherty to have taken their loss and called it quits and never have said a word and never have been on the stand and never have had their lives dragged out in public as happened in this case. Their own

interest lay the other way.

They were testifying because the Government subpoenaed them in the enforcement of the federal law. They were telling the truth, they were telling it as it happened and they have no interest or no motive to do it. If they have any interest, certainly that interest would be in letting the thing pass, bury it dead, and forgetting about it.

* * * * * * * *

That's how he came in here. He had the thirty-three districts, he was the spokesman. You remember Mr. Tejan said, "Well, at the meetings Mr. Stirone was the spokesman for the Hod Carriers." He was also the head of this Heavy Engineering Council which included teamsters, carpenters, hod carriers and heavy engineers. He was the president of that. There's no question that he was Mr. Big in labor in Western Pennsylvania, but you know, I wouldn't have had to bring all those witnesses to show you how big Mr. Stirone is in labor. You saw how how big he was. Wasn't it disgraceful that all those big constructors, all these big contractors paraded into this court one after the other? I don't know how many of them there were, maybe 20, 25 of them, to stand on that stand, to stand up there and testify Nick Stirone has a tremendous, wonderful reputation for truthfulness, for honesty, for being law-abiding.

I asked them about various rumors and whether they'd ever heard of them before. Some of them said they never heard of anything. Of course, this case broke two years ago and it was all over the papers. None of them ever heard anything bad about Nick Stirone.

Do you remember the testimony? Do you remember that Nick Stirone has been a fast buck

artist all his life? Do you remember that he had shovels? He said Mrs. Stirone owned the shovels, but he was there when they negotiated the contract. They rented that shovel to Perini for $2,000 a month. I asked him if the shovel cost more than $20,000. He said he couldn't remember how much the shovel cost. I asked him if the contract was for two years. He couldn't remember how long the contract was for. He was in a venture with the big venture man from New York, the emergency witness Labowitz. Labowitz himself, the big scrap dealer that deals in whole plants and doesn't even own a scrap yard, that was Stirone's partner. He was in deals with Labowitz. He was renting equipment, he went out and got a contract. He went out and rented some equipment from a man named Beintend, who told you on the stand that Nick got a commission. He said himself he dealt with a ward chairman by the name of Spankard to try to get a parking lot concession. He's been in everything.

He says, "I know my way around town," and yet all those contractors got up on the stand and testified as to his character. Do I have to tell you how big Mr. Stirone is in labor or could you see it from all the facts that those people paraded up here, one after another, to testify? Don't you begin to wonder?

* * * * * * * *

That shows you that Mr. Dierker was willing to testify to anything that Czar Nicholas Stirone wanted him to testify to. He'd testify to anything. He'd come right back up there on the stand, a man in his position and say, "Oh yes, I have refreshed my memory. As I recollect now it was the William Penn." It shows that the whole thing is a fabrication.

* * * * * * * *

So that little inquiry by Mr. Casey gave him the right to make all those long accusations that Mr. Rider was out of town every week end, that Mr. Rider didn't take care of his business, he called him a playboy. He got into gambling activities. Now, what difference does that possibly make? If Mr. Rider was a bad businessman, he didn't have any right to extort money from him. If Mr. Rider was a playboy, and I say there is no evidence he is, you don't have any right to extort money. Whatever else might have gone wrong in Mr. Rider's business dealings, you have no right to extort money and that is the issue. And who is throwing smoke? Who is trying to make this into a trial of Rider? The defense is trying to. They tried to make it a trial of me. In one case they didn't even like the demeanor of the judge on the bench. They have attacked everybody.

MR. CASEY: Now if the Court please, I think there ought to be argument upon the facts. I have sat here and heard "Czar" and inflamatory remarks. I repudiate my agreement if I have to do this.

MR. TEITELBAUM: I thought that would happen.

THE COURT: Now—

MR. CASEY: I'd like to ask anybody else if you thought it would happen. You are doing too much thinking now.

THE COURT: Now—

MR. CASEY: Besides that, I want to call the Court's attention to the $760,000, that it was the value of the contract.

MR. TEITELBAUM: This is awful, Your Honor.

THE COURT: Mr. Casey, it's up to the jury to evaluate the facts. If there is any misquoting of the facts by either counsel, it's not your recollection, it's

not Mr. Teitelbaum's recollection, but it's the recollection of the members of the jury as to what the facts are.

MR. TEITELBAUM: You will recall that's exactly what I told you when I started out. Please take your own recollection, if I said anything contrary to what you remember. It makes it difficult to argue, of course when you are interrupted.

MR. CASEY: Well, I apologize for interrupting. I held myself as long as I could and listened to unjust accusations.

MR. TEITELBAUM: If it please the Court, I think that the marshal ought to be called.

THE COURT: Mr. Casey, that's enough.

* * * * * * * *

Now, in addition to the fact that Mr. Stirone and Mr. Dierker have given you inconsistent, unbelievable and downright false testimony which you are entitled to consider, I think you ought to also consider the logic of the defense contentions.

As I said to you, the function of a jury is to use your experiences in every-day life. Who is the defendant? The defendant is an extremely powerful labor leader. He is Mr. Big in labor in Western Pennsylvania. By his own testimony he is a greedy, avaricious man, always out looking to see if he could make a fast buck. He is renting equipment, he is doing everything else in addition to being a labor leader, and Mr. Moreschi says, my recollection is that Mr. Moreschi says that labor leaders are only supposed to work in the job of being a labor leader.

Are they supposed to go out and rent trucks to contractors who are using their labor? Are they supposed - not trucks, equipment. Are they supposed

to rent equipment to people who are using their labor and with whom they must negotiate? Are their laborers getting a square deal if they are renting to people with whom they negotiate equipment at a good price? Think of that. Is that the act of this honest labor leader whose word is his bond? There's the picture of him. He's making all kinds of deals. You heard his deal with Joe Labowitz, the New York venture man. He didn't bother to ask Rider how much Rider was going to make. And think of Ruston Company. Isn't that an unusual picture, a man has a company set up to record his legitimate transactions? Now, that's what he told us. He didn't know what else it did. He says, anything. "You ask it and I'll tell you whether they do it or not." Is that the answer to a question? He says he didn't know what they did, but if I'd ask him, if I'd itemize some things, he'd tell me whether they did them. So I started to itemize some, I itemized rental of equipment. He says, "Oh yes, they did that." Then he corrected himself; he says, "No, it was his wife's equipment." Then I asked him something about it wasn't in Ruston Company and he says, "Well, everything my wife owns, I own, because I am married, and everything is all together." Then I asked him who got the rent. He says, well, there was some assignee. Well, what is an assignee? That's when you put something in somebody else's name. I asked him who. He says he doesn't know. He doesn't know who got the $2,000 a month for that truck that his wife owned. Unbelievable.

Consider the logic. Never before had Stirone gotten a commission for getting a contract. But in at least two instances that you know of he had gotten shakedowns on other occasions. It was his pattern. He used fear, he used fear of labor trouble to get money from people who were in the contracting

business. He used fear and he used fear with Rider. He not only used fear of labor trouble, but he used fear with Rider of his tremendous and important position.

Consider in considering the testimony of Dierker and the Bunchers that lots of contractors have shown that they are quite willing to do Nick Stirone a favor by testifying. Now, Dierker and the Bunchers — Dierker, of course, is in the thing up to his ears and so are the Bunchers. So what else would you have expected the Bunchers to say? Do you remember something about the Bunchers? Buncher sat on the stand and Mr. Paletta asked him how much scrap was in the building. He says, I don't know. "Well, was there a hundred thousand dollars worth of scrap in the building," or first, two hundred. He says, "I don't know whether it's two hundred." "Well, is it one hundred thousand dollars in the building?" "Yes, there was a hundred." "Was there a hundred fifty?" "Well, I don't know." Then what comes out is that Bunchers themselves had bid over $200,000 for the scrap in the building. Now, certainly they were not being truthful with you.

Then something else. Buncher let something slip that I am sure he didn't mean. He says he had a list of all the bids by all the people who bid on the building. How did he get that and why did he have that? What business did he have with that? Who is Buncher? Buncher tried to bid in the building himself. Doherty hadn't figured in, and it is obvious and implicit in the case he hadn't figured in in his bid any $35,000 take for Nick Stirone, and he hadn't figured in the price ticket, so he was the low bidder. He got the job, because he hadn't figured in Nick's fix. That upset Bunchers. —And that upset the Bunchers who had also been trying to bid on the

contract. Doherty then got the contract. Doherty is a man who is skilled in the wrecking business, a man who is in the wrecking business, a man who is in the wrecking business now. He testified that as to what happened. His story would make no sense if it weren't true. It would make no sense for a man to have picked Nick Stirone if he didn't even know him. With anybody he could have picked, why pick Nick if he didn't know him? If he had only met Nick for two minutes five years ago, why would he pick out Nick? What reason has ever been given to explain a thing like that?

And I say something else to you. The story was that Mr. Doherty told you the metals, the brass and lead and other non-ferrous metals were given to Buncher. Now, two years ago, two years ago, Mr. Buncher told you that Ed Stiles of the F.B.I. went out to see him about this proposition. At that time he knew that he was charged with that matter. He knew what was involved. Yet he appeared and I say something else to you, that Doherty has been sitting around this courtroom since this case opened under our subpoena and Nicholas Stirone knows him and saw him sitting around there and yet on Friday when Buncher comes into court, he says, "I only have part of my records. I haven't had time to get all of them. It would have taken me three days." He's had two years. If he had records of the payment to Doherty for the non-ferrous metals, if he had paid Doherty for them and had records of it, I assure you that he would have had them.

MR. CASEY: If the Court please, I have a motion on this record for a recess of this trial with reference to that.

MR. TEITELBAUM: Oh, my I thought we had agreed.

MR. CASEY: As the record stands.

THE COURT: Mr. Casey—

MR. CASEY: Well, I can't stand—

THE COURT: Just a minute. There's no question about your motion.

MR. CASEY: He is arguing it right to this jury right now and I want it put upon this record.

THE COURT: Well, you have—

MR. CASEY: I move this Court for a recess in order to bring that evidence in here or this man is up in front of this jury accusing me of not being able to do it.

MR. TEITELBAUM: Mr. Casey, your word isn't very good.

MR. CASEY: My word is loud.

MR. TEITELBAUM: It's lousy.

THE COURT: All right, sit down now. Go ahead with your speech.

MR. CASEY: I want it upon the record that I—

THE COURT: It's on the record.

MR. TEITELBAUM: Ladies and gentlemen of the jury, if you remember, during the course of Mr. Casey's talk I on no occasion interrupted whatever he had to say. I said afterward to the Court the objections, whatever I had to object to. I did not interrupt.

MR. CASEY: I want the jury to know that I did that in good faith until I hear this sort of business going on. I contained myself as long as I could.

MR. TEITELBAUM: If the Court please, do I have to be subjected to this?—

THE COURT: Proceed now. Mr. Casey—

MR. CASEY: I have to do something about it.

THE COURT: Mr. Casey, you are not to interrupt him again. If there are any objections you have,

make them after he gets through.

MR. TEITELBAUM: When the pressure gets tough, some people lose their manners, I guess.

* * * * * * * *

June 19, 1957

9:30 a.m.

Morning Session

(At Side Bar)

MR. CASEY: Counsel for defendant objects to the inflammatory remarks of the United States Attorney in the trial of this case in connection with the statements as to "labor boss", "Czar", "Czar Nicholas," and the remarks concerning the coercion or intimidation of the character witnesses who were employers of members of the local union.

Further, I'd like to place upon the record, the defendant alleges that said remarks were injurious and prejudicial to defendant's case and place upon the record objection to the action of the Court in permitting counsel for the Government to examine, both over the objection of the counsel, the minutes of District Council and Local 1058 which had only been identified in the trial and ordered in the possession of the United States clerk.

MR. TEITELBAUM: Counsel for the Government likewise objects to the inflammatory remarks concerning Mr. Rider, the reference to him as "Playboy Rider," the reference to various trips which there is no evidence to substantiate. We have also no request.

MR. CASEY: I don't either, no requests.

IX

CHARGE OF THE COURT

Members of the jury, you have now heard all of the testimony in the case and the arguments of counsel and it is now time for you to perform your function in the case, which is to determine upon a just verdict between the defendant, Nicholas A. Stirone and the United States. In rendering a true verdict as your oath binds you to do, you are performing a function of ancient origin. In ancient times, as well as in modern times, a trial by jury is one of the hallmarks of justice and liberty. The Court has confidence that you, in this case, will perform your duty conscientiously.

Members of the jury, under the Constitution of the United States, the Congress has been given power to regulate commerce between the various states. In the exercise of its Constitutional powers, Congress has enacted a statute which is intended to protect the channels of interstate commerce from extortion.

It is alleged by the Government that the defendant has violated that statute and has committed an offense against the United States.

In cases such as this, the Court and jury have different functions to perform. The Court is required to rule upon questions of law during the trial of the case and to instruct the jury as to the law applicable to any issue which you are to determine. You are required to take the law from me as I give it to you in these instructions. You, the members of the jury, when the case is submitted to you become the judges of the facts. You alone determine what the facts are, what witnesses are to be believed and what is true. You are the sole and ex-

clusive judges of the facts and of the credibility of the witnesses and you should not permit any invasion of your province to alone judge the facts.

For that reason, I am not going into the facts with you in detail and I do not intend to summarize the testimony of any witness in the case. If I should do that, it would unduly extend the length of this charge and would only add to the heavy burden which rests upon you to find the facts from the evidence. If I should review the testimony, I might emphasize parts of it and omit others which are equally important.

Therefore when I refer to the testimony in this charge, it will be only for the purpose of pointing up the issues you have for decision and to explain the principles of law which may be involved, depending upon how you find the facts. You should not depend upon any impression you may have as to the Court's view or the view of the lawyers as to what the facts are. Your judgment of the facts should be your own uninfluenced judgment, uninfluenced by the Court, except as you are bound to follow the law as given to you. Statements made by counsel as to their recollection or what was said or written are not binding on you. However, the arguments of counsel are entitled to your respectful consideration and their arguments should be of considerable help to you in marshalling the facts in your mind, but you alone must judge the facts.

You must not attach any significance whatsoever to the fact that at times the Court in making rulings on the evidence sustained the objections either of the defendant's counsel or of the Government's counsel. These rulings involve legal questions only and you must not be concerned with the reasons for the rulings or why the Court ruled in a particular manner.

The Court has no impression as to the innocence or guilt of the defendant. The Court has high regard for

both counsel for the defendant and counsel for the Government and you must not infer from any ruling or remark of the Court that the Court displayed favor for one party or the other.

The Act of Congress under which the indictment has been returned and with which we are concerned in this proceeding provides as follows, as it relates to this case: "Whoever in any way or degree obstructs, delays or affects commerce or the movement of any article or commodity in commerce by extortion shall be guilty of an offense against the United States." The statute then goes on to define extortion as the "obtaining of property from another with his consent induced by fear."

Ladies and gentlemen, I am not going to read the entire indictment to you because you will have it with you in the jury room to aid you in passing upon each of the allegations contained therein in an orderly manner. In the indictment it is alleged in Paragraphs 4, 5 and 6 as follows: "Fourth, that commencing on or about the first day of March, 1951, the exact date being to the Grand Jurors unknown and continuing thereafter up to and on or about December 31, 1953, in the Western District of Pennsylvania and within the jurisdiction of this Court, Nicholas A. Stirone did knowingly, willfully and unlawfully obstruct, delay and affect interstate commerce between the several states of the United States and the movement of the aforesaid materials and supplies in such commerce by extortion, to wit, by obtaining property to the value of $31,274.13 in the form of money from William G. Rider induced by fear and by the wrongful use of threats of labor disputes and threats of the loss of, and obstruction and prevention of, performance of his contract to supply ready-mixed concrete."

Paragraph 5 provides, "Defendant Nicholas A. Stirone threatened and caused William G. Rider to fear that preparation and delivery of the mixed concrete

would be delayed or altogether prevented and that as a result said William G. Rider would suffer financial loss if the defendant did not obtain the property as stated in Paragraph 4."

Paragraph 6: "Defendant Nicholas A. Stirone threatened the said William G. Rider that defendant would, in his capacity as a labor representative wrongfully and corruptly embark upon a course of oppressive action against said William G. Rider by preventing movement of supplies and materials and ready-mixed concrete."

Therefore in this case, you have two decisions to make. First, did the alleged conduct of the defendant in any way or degree obstruct, delay or affect interstate commerce or the movement of any article or commodity in interstate commerce?

Second, did the defendant obtain property from Mr. Rider with his consent which was induced by fear, as I shall explain that term to you?

I have told you that you alone are to judge the innocence or guilt of the defendant. Therefore, the indictment is not evidence and can not be considered by you as any evidence of the guilt of the defendant. The indictment is merely a formal written accusation in which is set forth the name of the defendant and the essential elements of the crime which the Grand Jury alleges he committed. You must not indulge any presumption of guilt from the fact that the defendant has been indicted by a Grand Jury.

We inherited the Grand Jury system from the English common law and it is a fundamental part of our system of justice but it means bringing an accused to trial only upon probable cause and upon an ex parte hearing. The indictment constitutes no evidence whatsoever of the guilt of the accused person. You as the trial jury determine whether in fact the defendant is innocent or guilty under the standards which I am now giving to you.

You should enter upon your deliberations on the evidence in this case with a presumption that the defendant is not guilty of the offenses charged against him, it being incumbent upon the Government before you would be privileged properly to convict the defendant to establish his guilt by evidence beyond a reasonable doubt and to a moral certainty upon every material, essential element necessary to constitute guilt of the offense charged.

By "reasonable doubt" is not meant all possible doubt. Very little in this world can be proved by human testimony beyond all doubt and the law does not require such a high standard. Nor is a reasonable doubt a fanciful doubt to be used by a juror to avoid an unpleasant duty, but "reasonable doubt" means that the mind of the juror is left in doubt after an honest consideration of all the evidence in the case and does not rest easily upon the certainty of the guilt of the accused.

In order to convict a defendant in a criminal case it is necessary that the collective minds of the twelve jurors should rest easily upon the certainty of the guilt of the accused of the offense charged, after the jury has given the entire evidence careful, fair and just consideration. If any reasonable doubt then exists as to the guilt of any accused person in the mind of a single juror, it would be the duty of that juror to stand firmly for his acquittal. Absolute certainty of the guilt of an accused person is not demanded by the law in order to convict a person of a criminal offense, but moral certainty is required and such moral certainty is demanded as to every proposition proved requisite to constitute the offense charged.

I shall also define a reasonable doubt to you as a doubt arising from the evidence or from a lack of evidence after consideration of all the evidence. It is not a vague, speculative, imaginary something, but such a doubt as would cause a reasonable person to hesitate to act upon it in matters of importance to himself or herself.

To put it another way, you can not find the defendant guilty unless you are so convinced by the evidence that you would venture to act on that conviction in matters of importance to your own interests.

The defendant has entered a plea of not guilty to the charges in the indictment, thus denying the material allegations contained therein. As you consider the evidence, it is important to bear in mind that the law presumes the defendant to be not guilty of the offense with which he stands charged. This presumption of innocence remains with the defendant throughout the trial, through all of its stages and should cause the jury to find him not guilty unless removed by evidence presented to you by the prosecution which establishes his guilt beyond a reasonable doubt of the charges contained in the indictment.

The presumption of innocence alone is enough to work the acquittal of the defendant unless you are convinced from all of the evidence in the case of the defendant's guilt beyond a reasonable doubt. The burden of proving the guilt of the defendant beyond a reasonable doubt never shifts. It continues from the beginning to the end of the case and applies to every element, fact and conclusion which the prosecution must establish in order to obtain a conviction. This is so even though I do not repeat the phrase every time I discuss those facts or elements necessary to establish his guilt or innocence. Therefore the burden rests upon the Government to prove beyond a reasonable doubt, first, that the defendant Nicholas A. Stirone, extorted money from William G. Rider as alleged in the indictment and second, that the conduct of the defendant obstructed, delayed or affected interstate commerce or the movement of articles in interstate commerce. Each of those is an essential element of the crime charged.

Since it is your exclusive function to decide what the facts are, it will be for you to determine the facts relating to the interstate commerce aspect of this case. It is only

if there has been one of these effects on interstate commerce that an offense against the laws of the United States has been committed, because interstate commerce is the basis of the federal jurisdiction in this case.

At the opening of the case, the Government introduced evidence relating to the dredging and shipment of sand which it contends was used in the manufacture of the cement which Mr. Rider used in performing the Ragnar-Benson contract which has been the subject of much testimony in this case.

It is the Government's contention that all or substantially all of the sand so used has been shipped in interstate commerce. It is also the position of the Government that concrete supplied by Mr. Rider containing the sand shipped in interstate commerce was being used in the construction of a plant which, when in operation, would produce articles of steel to be shipped in interstate commerce.

Consider the evidence of the Government on this question in the light of any other circumstances or other evidence bearing on the interstate nature of the shipment of sand or the sand used in making concrete supplied by Mr. Rider and on the use to which the mill under construction would be and was put. Then if you are satisfied beyond a reasonable doubt that the sand had been shipped from another state into Pennsylvania by any means of transportation and was used in making concrete supplied by Mr. Rider and that Mr. Stirone extorted money from Mr. Rider, the alleged extortion would be an act which obstructed, delayed or affected interstate commerce, and the movement of commodities in interstate commerce.

Or if you are satisfied beyond a reasonable doubt that Mr. Rider's concrete was used for constructing a mill which would manufacture articles of steel to be shipped in interstate commerce and if you also believe that the defendant extorted money from Mr. Rider, you are instructed as a matter of law that there has been a substantial effect on

interstate commerce shown by the United States. In other words, if you find the facts to be as the Government contends, interstate commerce has been affected, obstructed and delayed.

The second essential element which must be proved beyond a reasonable doubt in order for you to find a verdict of guilty is the fact of extortion, of which Mr. Stirone stands here accused. I have defined the term for you as the obtaining of property, including money, from another with his consent which is induced by wrongful use of fear.

Mr. Stirone admits having received a sum of money from Mr. Rider or Rider Supply Company in the amount of $31,274.13, which was paid by a series of checks during a period from February, 1952 until January of 1954. These checks are in evidence and the receipt of money by Mr. Stirone is not one of the questions in issue. That is admitted. Nor is there any question involved here that the money was paid to Mr. Stirone with the consent of Mr. Rider. Mr. Rider paid the money of his own volition.

However, as you are undoubtedly aware, there is much disagreement between the parties as to whether Mr. Rider's consent was induced by a wrongful use of fear by Mr. Stirone. That is the question you must decide.

First of all, what does the statute mean by the word "fear" and what does the word mean as used by the Government in this case? All of us have had personal experiences involving a fear of some unfortunate impending event. It is an emotion of anxiety, concern alarm or even dread. We may fear for our personal safety or our family's or the safety of our property or for our jobs or businesses.

It is alleged by the Government that Mr. Stirone induced Mr. Rider to pay money by causing him to fear that otherwise his business would in various ways be interfered with to Mr. Rider's economic loss. Therefore, strike from your mind any erroneous impression you may

have that anything but fear of economic loss is involved in this case.

According to Mr. Rider, Mr. Stirone in September of 1951 in the company of Mr. Dierker, approached him and demanded 50 cents for each cubic yard of concrete to be furnished by Rider under the Ragnar-Benson contract, and it is alleged that the defendant then told Rider that he would not be able to hold the contract unless the payment were made. It is also contended by the Government that at the same time there was an intimation that Mr. Rider would have labor troubles unless the payments were made to Mr. Stirone as demanded.

Mr. Rider testified for the Government as a witness to those alleged events and it is for you to determine whether the testimony is accurate, reliable and truthful in whole or in part. He is an important witness and his testimony should be carefully weighed and considered by you in determining whether it may be accepted as a basis for convicting the defendant upon evidence satisfactory to you beyond a reasonable doubt.

If you find that the alleged transaction in September of 1951 occurred, that alone would not be sufficient to convict the defendant unless you further find that he, the defendant, acted with deliberate and purposeful intention of causing Mr. Rider to fear that his business would be injured if he did not comply with the demand for the money, that Mr. Rider was actually put in fear that the consequences allegedly threatened would follow, if he did not pay the money and that Mr. Rider's fear was reasonable under the circumstances and that he paid the money for that reason.

How are you to determine the intention with which Mr. Stirone acted if you find that he did the act of which he is accused, as contended by Mr. Rider and the Government? The defendant may not be found guilty of a violation of the statute simply because he received money from

Mr. Rider. The mere receipt of money by a labor representative from a contractor does not constitute a violation of the statute involved and you, the jury, must not concern yourself with the question whether Mr. Stirone's dealings with other contractors were proper or improper by some other standard. The only question for your determination is whether the defendant extorted money from the contractor in this action, William G. Rider.

Mr. Stirone contends that the payments which he received were legitimate commissions for his, Stirone's, assistance to Rider in securing the Ragnar-Benson contract. If you believe the evidence of the defendant, it is obvious that no crime has been committed under the statute and it will be your duty to acquit the defendant of the charge against him.

If you do not believe the evidence of the defendant, you may nevertheless not convict him unless you find that he intended to extort money.

Intent or intention are difficult terms to define. They practically define themselves. However, intent means doing an unlawful act, intentionally. That is, freely, purposely. It means knowingly doing an act which is forbidden by law. I doubt if I can give you a better definition than that.—A specific wrongful intention to do the act which the law prohibits. A guilty verdict should not be rendered by you unless this state of mind on the part of the defendant is found from the evidence.

All of you are experienced in the affairs of the world and you are continually being called upon to decide from actions or statements of others, what their intentions or purposes are Consider all of the circumstances as they relate to the intentions of this defendant in determining his guilt or innocence. Since you can not see into his mind you have to deduce his intentions and his state of mind from his conduct as described by you and his actions and his statement as detailed by the witnesses who you decide

are trustworthy and worthy of belief.

You have been instructed by the Court that unless Mr. Rider was actually put in fear by the intentional conduct of the defendant, there could be no conviction and unless his fear was reasonable under the circumstances, there could be no conviction under the present indictment.

You have heard the testimony in this case of Mr. and Mrs. Rider as to Mr. Rider's condition of mind at the time of and after the alleged conversation between the defendant and Rider took place, as well as the testimony relating to Mr. Rider's knowledge about the defendant as an important figure in labor activities.

It is for you to decide what the facts are and to arrive at a conclusion based upon the evidence whether Rider was placed in a reasonable fear that the defendant would cause the contract to be lost or as contended, would induce labor troubles unless his wrongful demand for payment was met. If you are satisfied beyond a reasonable doubt that the defendant intended to and did put Mr. Rider in fear that the contract would be terminated or labor troubles would ensue, if the alleged wrongful demand for payment was not met and that Mr. Rider actually experienced a reasonable fear that those consequences would follow if he did not pay the defendant and that the payments were thereafter made because of Rider's fear, then you should conclude that the defendant is guilty of the offense charged against him in the indictment.

The Court instructs you that it is immaterial whether or not the defendant did have sufficient influence or sufficient power among labor unions or with contractors, including the Ragnar-Benson Company, that he could prevent Mr. Rider from acquiring or holding the contract for the supplying of ready-mixed concrete or the bringing about of labor troubles. If the defendant intended to and did put Rider in fear that those consequences would result from the failure to pay as requested and Rider reasonably

thought the defendant had such power, the defendant could be convicted under this statute although he in fact had no such influence or power.

The defendant has offered two separate defenses to the accusation of the Government. The first of these is that the defendant did not extort money from Mr. Rider but that he and Rider entered into a bona fide business arrangement whereby for the payment of a commission the defendant agreed to help Rider obtain the Ragnar-Benson contract and did so.

In his contention, he was supported by the testimony of Mr. Dierker, the president of the Duquesne Slag Products Company, on whose premises Mr. Rider operated a leasehold. You will recall also the testimony of Mr. Kassab of the Ragnar-Benson Company with respect to his conversations with the defendant, the time thereof and the influence of the defendant in the determination of whether or not Rider would be given the contract.

It is the contention of the defendant that Mr. Stirone with the approval and consent of Mr. Rider, interceded and gave assurances to the Ragnar-Benson Company concerning Rider's ability to perform the contract and thus was entitled to be paid the commissions which the defendant alleges were agreed upon by Rider because the defendant and Mr. Kassab say he was instrumental in securing the contract.

As you know, it is the contention of Mr. Rider that he had obtained the contract before his meeting with Mr. Stirone.

The defendant has no burden of proof to sustain as to the defense of a legitmate contract. It is enough if the evidence on this score, either alone or together with other evidence in the case, leaves a reasonable doubt as to his guilt, in which event he must be acquited. If on the other hand you find the defendant, Nicholas A. Stirone intended

to and did extort money from William G. Rider by inducing in Rider a fear of economic loss or injury to his business it is immaterial whether the defendant actually did intercede with the Ragnar-Benson Company on Rider's behalf since in that case, such intercession would not have been done with the consent or approval freely given of Mr. Rider.

The second defense which has been offered on behalf of the defendant is what the law calls the defense of alibi. The defendant contends and has offered evidence for the purpose of showing that he was away from Pittsburgh on union business at the time of the alleged conversation with Rider in September of 1951 and at the time of the alleged delivery of the first check in February of 1952.

It is the burden of the Government to prove every element of the offense charged against the defendant beyond a reasonable doubt. The defendant is not required to disprove those charges. When the defendant comes forward with a defense, he does so in order to raise a reasonable doubt of guilt in your minds.

An alibi simply means that the accused was at another place at the time the act charged is alleged to have been committed and therefore could not have committed it. All the evidence should be carefully considered by you and if the evidence on this subject alone or considered with all the other evidence is sufficient to raise a reasonable doubt as to the guilt of the defendant, you should acquit him. The accused is not required to prove an alibi beyond a reasonable doubt or even by a preponderance of evidence. It is sufficient to justify an acquittal if the evidence upon that point satisfies you that the defendant was in fact at another place when the act charged was committed or raises a reasonable doubt of his presence at the time and place of the commission of the act charged and you will understand also that the attempt of the accused to prove an alibi or any defense does not shift the burden of proof

from the prosecution, but that the prosecution is bound to prove his presence beyond a reasonable doubt.

From what I have said to you so far, members of the jury, it is obvious that the issue of whether the defendant extorted money from Mr. Rider depends upon the credibility and reliability of the witnesses who have appeared in the case. It is difficult for me to recall a case in which the lines were more sharply drawn between the testimony of the various parties and their witnesses.

As you are the judges of the fact, so are you, the members of the jury, the sole and exclusive judges of the credibility of any witness who has taken the stand and given testimony under oath. With that question, the Court has nothing to do. You should take all the evidence adduced both by the Government and by the defense and give such evidence full, fair and impartial consideration. Should there be conflicts in the testimony of different witnesses as there are in this case, you should reconcile such conflicts if you can consistently do so for the law presumes that a witness has told the truth but if you can not reconcile conflicting statements of different witnesses, you are the sole and exclusive judges of the credibility of the witness and the weight to be given their testimony. In other words, if there are conflicts in the testimony of the witnesses, you should harmonize such conflicts upon the basis of truth, if this can be done reasonably and consistently with reason but if conflicting testimony can not be so reconciled in your minds, you and you alone are to say and to find who and what is to be believed.

In determining the weight and credibility of the witness' testimony, you should take into account the manner and demeanor of the witness on the stand. You should consider the reasonableness or the unreasonableness, the consistency or inconsistency, the probability or improbability of what he or she has said. You should look to his or her interest or lack of interest in the result of the

trial, to his or her relationship, if any, to a party to the litigation, to his or her motive to speak the truth or to his or her motive to swear falsely, to his or her means of knowledge, his or her opportunity to know whereof he or she speaks and to his or her bias, prejudice or feeling, if any such be shown, or to his or her lack of such emotion or to any discrepancy in his or her testimony.

The testimony of the defendant who is on trial in a criminal case is to be considered and weighed by the members of the jury taking all of the evidence into consideration and giving such judgment to the testimony as in your judgment it ought to have. In other words, the testimony of the defendant is to be considered by you in the same manner as the testimony of any other witness who speaks from the witness stand.

If you believe that any witness has willfully sworn falsely to any material fact in this case, you are at liberty to disbelieve the testimony of that witness in whole or in part or believe it in part and disbelieve it in part, taking into consideration all of the facts and circumstances of the case.

I have requested you on numerous occasions throughout these proceedings to refrain from reading newspaper articles or listening to radio and television broadcasts pertaining to the case or discussing the case among yourself or with others. I am sure you have acted in accordance with the Court's request. If you are sympathetic or prejudiced in favor of any party, you should not allow it to influence you at all in your verdict, but in your verdict you should be guided alone by the evidence and instructions given you by the Court. Sympathy and prejudice must be put aside entirely.

The defendant, Mr. Stirone, has introduced evidence as to his good character. I say to you, as a matter of law, that this is his right and privilege. Evidence of good character is substantial evidence. It is not a mere make-

weight thrown into a doubtful case. Therefore, having been put in evidence in this case, it becomes your duty to consider it with the other evidence in the case and when so considered in connection with all the other evidence in the case, it may either alone or considered with other facts generate a reasonable doubt.

In connection with the character evidence in this case, I permitted questions whether or not the various witnesses had heard rumors as to prior conduct on the part of the defendant similar to that alleged against him here. I tried to convey to you then that the question was allowed only for the purpose of testing the standards of the witnesses who were testifying to the defendant's character. That is the only purpose for which the evidence as to such rumors may be considered by you.

The Court has allowed the Government to introduce evidence as to the alleged wrongful obtaining by the defendant of money from other contractors on other occasions which I will not go over in detail. I am referring to the matters relating to the Doherty Company and the Hawthorne Company and will ask you to recall not only the testimony of the Government's witnesses, but as well the testimony introduced by the defendant on cross examination and in surrebuttal tending to show whether or not such acts were committed by the defendant on other occasions.

Evidence that an act was done at one time or on one occasion is not any proof whatever that a similar act was done at another time or on another occasion. That is to say, evidence that a defendant may have committed another act of a like nature may not be considered in determining whether the accused committed the offense charged in the indictment, nor may evidence of alleged other acts of a similar nature be considered for any purpose unless the jury first find that the other evidence in the case, standing alone, establishes beyond a reason-

able doubt the accused did the particular acts charged in the indictment.

If the jury should find beyond a reasonable doubt from other evidence in the case that the accused did the acts charged in the indictment, then the jury may consider evidence as to the alleged other acts of a similar nature in determining the state of mind or intent with which the defendant did the acts charged in the indictment or the jury may consider evidence as to alleged other acts of a similar nature in determing whether the defendant had a plan or scheme of which the acts charged in the indictment were part for obtaining money from contractors by extortion and if the proof of alleged other acts of a similar nature is established by evidence which is clear and convincing, the jury may draw therefrom the inference that in doing the acts charged in the indictment, the defendant acted willfully and with a specific intent and not because of an innocent reason or that he acted in pursuance to his plan or scheme for obtaining money by extortion. All of this presupposes that the jury first find beyond a reasonable doubt that the defendant did the acts charged against him in the indictment.

I caution and instruct you, members of the jury that the fact that the defendant may have committed another similar act is not of itself any evidence that he is guilty of the offense charged in the indictment. Evidence as to such other acts may be considered by you only for the purpose of shedding light on the intention of the defendant or on whether his conduct discloses a scheme or plan to obtain money by extortion. If you are satisfied that the evidence shows such an intention or such a plan or scheme, this would be relevant in determining whether the defendant is guilty of the charge in the indictment.

To briefly summarize the elements involved in this action, it is the contention of the Government that the defendant extorted money from William G. Rider by

causing him to fear that he would lose the Ragnar-Benson contract or that labor troubles would follow if the money was not paid.

The Government contends that the defendant deliberately and intentionally induced that fear in Mr. Rider and that Rider was actually put in fear that he would sustain harm or injury in his business if the money was not paid and that Mr. Rider's fear was reasonable because he knew that the defendant was an influential man in labor union circles.

It is contended by the Government that the act of the defendant obstructed, delayed and affected interstate commerce because materials used by Mr. Rider had been shipped in interstate commerce and were being used in the construction of a plant, which would manufacture articles to be shipped in interstate commerce.

The defendant admits receiving money from William G. Rider but denies any act of extortion and contends that the money truly represented commissions as the checks stated and that the commissions were the result of a bona fide contract voluntarily entered into by William G. Rider with him whereby he, the defendant, agreed to perform a valuable service and intercede with the Ragnar-Benson Company to give the contract to Mr. Rider.

Secondly, he contends that he was not in Pittsburgh at the time of the alleged extortion as testified to by Mr. Rider and moreover, that he was not in Pittsburgh at the time Rider allegedly delivered the first extortion check to him.

He contends that his reputation for truthfulness, honesty and fair dealing as testified to by numerous witnesses is inconsistent with his having committed the act alleged in the indictment.

All such matters are for you because you are the sole judges of the facts. You are to decide the truth. If you believe the testimony of the defendant, you must find

him not guilty. On the other hand, if you are satisfied beyond a reasonable doubt that the defendant intended to and did extort money from William G. Rider, you would be warranted in rendering a verdict of guilty on the evidence, if you find further that the evidence relating to interstate commerce as introduced is true.

As I have repeatedly told you, these instructions must not be taken by you as any indication that the Court has formed an opinion as to the guilt or innocence of the defendant. Disregard any opinion you think the Court might have. The Court has no such opinion and is interested only in helping you to arrive at a true verdict. It is your responsibility alone to find the relevant facts and decide the case on the evidence. Your verdict should represent the conscientious, considered judgment of each juror.

I think that you know that your verdict must be unanimous. When you retire to deliberate, consider the evidence and each of you should discuss your views on the evidence freely and openly in the light of reason and common sense, bearing in mind at all times that you would violate your sworn duty if you base your verdict on anything but the evidence heard in the courtroom and these instructions on the law.

Does counsel for the Government or counsel for the defendant have any further requests for charge?

MR. CASEY: I have no further requests for charge except I would like to call attention of the Court in his charge concerning the testimony of the defendant. The latter part of the charge, I would ask that that be enlarged to include the testimony of defendant's witnesses, and the defendant.

THE COURT: Yes, well, I referred to the testimony of witnesses in my charge and I stated that the testimony of the defendant was to be considered and weighed the same as the testimony of any other witness and of course,

that applies to the defendant's witnesses. I think that has been thoroughly covered in the charge.

MR. TEITELBAUM: Government has no additional requests for charge.

MR. CASEY: May I see the Court at Side Bar?

AT SIDE BAR

MR. CASEY: The only thing that I had on that latter part was you said if you believed the testimony of the defendant.

THE COURT: And his witnesses.

MR. CASEY: That's what I wanted to get to.

MR. TEITELBAUM: I made a little check. You covered every point except the one thing you didn't say if he had the fear whether it was with regards to who introduced the fear, Rider or Dierker, - or Stirone or Dierker. I don't think you ought to open it up again.

THE COURT: I will make a further statement of the testimony of the defendant and his witnesses.

MR. CASEY: Yes, in line, just add that to your charge.

I except to the Court's reading of the indictment as to the threats of loss, particularly Paragraphs 4, 5 and 6 and the Court's charge as to fear since there is no evidence or any inference of fear in the evidence.

I object to the Court's charge as to the fear of economic loss and I also except to the Court's charge as to interstate commerce, especially as to the sand and particularly to the Pittsburgh Steel mill.

I object to the Court's use of the word "influential man in labor" and "important figure". I also object to the Court's instruction as to rumors, there having been no rumors shown on the part of the Government. I except to the Court's charge as to the other crimes, there being no similarity or scheme shown by the evidence.

I also object and except to the Court's charge as to the payments thereafter made because of fear, there

having been no evidence of same.

I object to the Court's charge that it was immaterial as to the influence of Stirone as to labor trouble.

MR. TEITELBAUM: I have no objections.

IN OPEN COURT

THE COURT: Members of the jury, I just wish to add this. I have referred to my charge to Mr. Stirone being an influential man in labor circles. I just wish to state that I am making that statement because that is the Government's contention and I mean by that according to the Government's witnesses, he is an influential man.

I have also been requested by counsel for the defendant to add with respect to my instructions to you with respect to witnesses that it covers the defendant and the defendant's witnesses. When I speak to you about the testimony of witnesses, I refer to the witnesses produced by the Government, I refer to the testimony of the defendant himself and I refer to all those witnesses called by the defendant.

Is that satisfactory, Mr. Casey?

MR. CASEY: Satisfactory.

THE COURT: Now, does the clerk have a verdict slip for me? (Verdict slip handed to Court.)

Members of the jury, the clerk has prepared a verdict slip, which reads as follows: "And now, to wit, June blank, 1957, we the jurors impanelled in the above case, find," and you will insert, "find the defendant guilty or not guilty," as the case may be and insert the date and there are twelve lines on this verdict slip, and each of you are required to sign the verdict slip.

Are the exhibits ready to go out with the jury?

THE CLERK: The exhibits are all in boxes and ready to go out. They have been checked.

THE COURT: All right, then the alternate jurors, at this time, we will excuse you from further service in this case and extend to you the thanks of the Court for the service you have given to date.

Will the bailiffs please come forward and be sworn? (Bailiffs sworn by the clerk.)

(Whereupon, at 10:55 a.m., the jury retired.)

AFTERNOON SESSION 3:30 p.m.

THE COURT: Members of the jury, have you agreed upon a verdict?

THE FOREMAN: We have, Your Honor.

THE COURT: May we have it?

THE CLERK: Members of the jury impanelled in the case of the United States of America, against Nicholas A. Stirone, defendant, No. 14871 Criminal, you say you find the defendant guilty as charged. So say you all.

THE COURT: What about the bond, Mr. Teitelbaum?

MR. MALCOLM ANDERSON: Mr. Stirone has been free on bond and we see no reason why the bond should not be continued until such time as the Court desires to sentence him. Does the Court want to sentence him now?

THE COURT: No.

MR. RICH: Your Honor, we are going to file an appeal within the required number of days.

THE COURT: You are going to file it. You will file the usual motions, is that what you say?

MR. RICH: Yes, motions.

THE COURT: No, I don't believe I'll sentence him now.

MR. ANDERSON: May we have the bond continued?

THE COURT: The bond will be continued. You are satisfied with the amount?

MR. ANDERSON: Yes, I don't think he's going to go out on it.

CERTIFICATE

I HEREBY CERTIFY that the foregoing pages contain a complete and accurate copy of the Stenotype notes taken by me at the trial of the foregoing case commencing on June 4, 1957, before the Honorable John L. Miller and a jury.

Erma M. Pock

Harriet C. Thomas

X

OPINION OF THE COURT

MILLER, District Judge

Following trial and conviction for a violation of §1951 of Title 18, U.S.C.A., the defendant Nicholas Stirone has filed motions for arrest of judgment, for acquittal and, in the alternative, for a new trial. The substance of the single count indictment was that the defendant, a union official, obstructed, delayed and affected interstate commerce and the movement of materials in interstate commerce by the extortion of $31,274.13 from William G. Rider. The extortion was alleged to consist of the obtaining of money by defendant's wrongful imposition on the victim of a fear of economic loss. 18 U.S.C.A. §1951(b) (2). Rider, a supplier of ready-mixed concrete, had obtained a valuable subcontract to furnish the concrete requirements for the construction of a new plant at Allenport, Pennsylvania, for Pittsburgh Steel Corporation. The principal contractor on the project was Ragnar-Benson Company, which began construction in September 1951. Rider operated a batching plant at Belle Vernon, Pennsylvania, on the premises of the Duquesne Slag Products Company from which he was required to purchase the sand and slag aggregate used in manufacturing the concrete. According to the government contention, the defendant, in the company of Dierker, the president of Duquesne Slag Products Company, visited Rider at his batching plant shortly after September 13, 1951. It was alleged that while the three were seated in an automobile the defendant made an unlawful demand for payment of $.50 on every cubic yard of concrete furnished under the Ragnar-Benson contract as a price for Rider's continuing to hold the contract. Rider, called as a witness by the government,

testified that when the demand was made he "got mad" and left the automobile after which Dierker joined him, persuading him to agree to the defendant's proposal and telling him that an adjustment would be made in the price of slag. Following Rider's consent to the proposal, defendant allegedly told him he would keep Rider out of labor trouble. Numerous checks were given to the defendant periodically from April 1952, until January 1954. The payments were entered on Rider's books as commissions. The defense countered with an alibi and with a contention that the payments represented true commissions as consideration for the defendant's agreement to use his influence with Ragnar-Benson to secure the subcontract mentioned above for Rider.

Conceding that the evidence must now be viewed in a light most favorable to the government, *United States v. Migiorino*, 3 Cir., 1956, 238 F. 2d 7, 10, the defendant contends that the evidence produced by the government at the trial was not sufficient to support the verdict of guilty. He argues first that the alleged extortion was not shown to have affected, obstructed or delayed commerce in any substantial way and second, that the alleged extortion payments were not shown to have been made by Rider because of fear.

In the indictment it was charged that the defendant by his coercive actions obstructed, delayed and affected interstate commerce and the movement of materials and supplies—i.e., sand, in interstate commerce. It was then proved at the trial that sand used by Rider in manufacturing ready-mixed concrete and purchased from Duquesne Slag Products Company had without question been transported in interstate commerce, and secondly, that steel articles produced at the plant after construction had been transported in commerce to the centers of the appliance and automotive industries outside the State of Pennsylvania. A sufficient foundation for introduction of both kinds of proof was laid in the indictment.

Defendant's denial that interstate commerce was affected by his actions is based in part upon an argument that interstate commerce ended with the delivery of the sand in Pennsylvania; that the interstate character of the sand was lost when it was delivered to and stored by Duquesne Slag Products Company and Rider; and that the sand lost its identity as a separate article of commerce when it was mixed with other ingredients to form a new product, ready-mixed concrete. The conclusion is said to follow that the present prosecution is founded upon a forbidden attempt to exert federal control over purely local matters—manufacture of ready-mixed concrete and the performance of a building subcontract. The answer to defendant's contention is that the power of Congress to regulate commerce is plenary and the power to regulate includes the power to protect commerce "no matter what the source of the dangers which threaten it." *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 1937, 301 U.S. 1, 37. Racketeering affecting interstate commerce is clearly within the federal control, *United States v. Green*, 1956, 350 U.S. 415, 421, and commerce may be affected even though the actual movement of goods has ceased and the character of the goods altered in the hands of the consumer. Since the act of Congress was intended to insure the free flow of articles in interstate commerce, the only criteria which this court may properly employ to determine whether the act is applicable are whether the channels of interstate commerce have been used and whether the free passage of articles therein has been threatened. The court correctly told the jury that if the government's facts were believed, interstate commerce had been affected by the conduct of the defendant. Cf. *United States v. Lowe*, 3 Cir., 1956, 234 F. 2d 919, 922-923, cert. denied, 1956, 352 U.S. 838. That statement was based upon a premise that a deliberate act which tends to prevent articles from being used once they have reached their destination after being shipped in interstate commerce dams up the stream of commerce and delays,

obstructs and affects interstate commerce as surely as though the same act had cut off the supply at its source. *Nick v. United States*, 8 Cir., 1941, 122 F. 2d 660, 668, cert. denied, 1941, 314 U.S. 687; *Hulahan v. United States*, 8 Cir., 1954, 214 F. 2d 441, 445, cert. denied, 1954, 348 U.S. 856.

Defendant also urges that the "new construction" doctrine prevents consideration of the interstate shipment of products manufactured at the plant following its completion in determining whether the extortion here affected interstate commerce. That doctrine appears no longer to be controlling in cases arising under the Federal Employers' Liability Act and the Fair Labor Standards Act where it arose. *Southern Pacific Co. v. Gileo*, 1956, 351 U.S. 493; *Mitchell v. G. W. Vollmer & Co., Inc.*, 1955, 349 U.S. 427. Nor was it considered in *Hulahan v. United States*, 214 F. 2d 441, under circumstances similar to the instant case. There is no reason for adopting so restrictive an interpretation of the act.

Aside from the question of federal jurisdiction, the issues affecting guilt under the statute are whether the victim was fearful, whether that fear was reasonable and whether the defendant knowingly made use of that fear to obtain the property of another. We turn to the argument that there was no showing that the payments were motivated by fear. "Fear" in the statutory sense of course includes a deliberately imposed fear of economic loss such as might result from an intentional interference with a valuable contract right. This proposition is well settled. *Bianchi v. United States*, 8 Cir., 1955, 219 F 2d 182, 189, cert. denied, 1955, 349 U.S. 915; *United States v.*

Dale, 7 Cir., 1955, 223 F. 2d 181, 183; *United States v. Varlack*, 2 Cir., 1955, 225 F. 2d 665, 668-669; cf. *Callanan v. United States*, 8 Cir., 1955, 223 F. 2d 171, 175, cert. denied, 1955, 349 U.S. 915; *Hulahan v. United States*, 214 F. 2d 441. It is equally clear that the subjective mental state of the victim is a relevant and important subject for testimony in determining the presence or absence of the requisite fear. *Nick v. United States*, 122 F. 2d 660, 671; *Callanan v. United States*, 223 F. 2d 171, 174. It was shown that the defendant was a responsible and important union official. During the period involved, the defendant was president of Local No. 1058 of the International Hod Carriers, Building and Common Laborers Union of America; he was president of the Heavy Engineering, Railroad, Contracting and Highway Construction Council which acted as bargaining agent for unions composed of carpenters, operating engineers, laborers and teamsters; he was chairman and spokesman for the Laborers' District Council, the bargaining agent which represented numerous unions affiliated with the Hod Carriers International. His position was known to Rider. In prosecutions under the act, the victim may testify, as did Rider, to his state of mind and motive in meeting the unlawful demand. *Bianchi v. United States*, 219 F. 2d 182-190. Rider's declarations to his wife and his conduct following his return from the alleged shake-down interview could also have been considered by the fact-finding body. 2 Wigmore, Evidence §661 (3d ed. 1940). Under the circumstances, it was for the jury to determine whether the payments were made by Rider, as the government contended, because of fear imposed by the defendant or, as argued by defendant, because of Dierker's persuasion and statements to Rider that an adjustment would be made in the price of slag.

It is next suggested that the government's improper use of subpoenas requires the granting of a new trial. See Rule 17, F.R.Cr. P., 18 U.S.C.A. In many instances

subpoenas were issued commanding the appearance of witnesses to testify in the "United States District Court for the Western District of Pennsylvania" at "633" or at "644" New Federal Building, Pittsburgh, the latter being room numbers of the offices of the United States Attorney. The procedure followed is disapproved. The validity of the subpoenas from the viewpoint of the witnesses is not in question since each took the stand and without objection gave testimony in response to the subpoena. *In re Meckley*, 1943, M.D. Pa., 50 F. Supp. 274, affirmed, 1943, 3 Cir., 137 F. 2d 310, cert. denied, 1943, 320 U.S. 760; 97 C.J.S., Witnesses §§22, 25, p. 374 (1957). Assuming that defendant has standing to object to a misuse of the subpoena power, a valid objection must be based on prejudice to his cause. The United States Attorney informs the court that the subpoenas were drawn in the form described above only to insure the keeping of proper records for the payment of witness fees. There is no averment or proof of ulterior purpose or of prejudice. There accordingly is nothing before the court to justify a presumption of injury to some substantial right of the defendant. See Rule 52(a), F.R.Cr.P., 18 U.S.C.A.

The defendant contends the admission of testimony showing other alleged unrelated offenses for the purpose of proving intent and scheme or plan was error. This evidence was elicited from the witnesses Doherty and Hawthorne. Doherty was the owner of an out-of-state demolition contracting firm and Hawthorne a former officer of another. The two firms were separately engaged in demolition projects in downtown Pittsburgh in 1952. Each witness testified that he had paid money to the defendant in that year. Doherty testified that at a pre-arranged meeting in May of 1952, the defendant demanded payment of $35,000. His story, if believed, admitted of only one interpretation—that as the price of being "a pretty cocky little guy," that is, refusing the defendant's demand, Doherty was subjected to an

onslaught of labor difficulties which eventually required him to change his mind. The payments in this instance took the form of deliveries of scrap metals from the job to a dealer for the defendant's account, the dealer, according to Doherty, having acted as a middleman in the illegal transaction. Hawthorne's testimony indicated that the defendant had asked him for the sum of $1000, telling him the money was for "political purposes" or as on other occasions when money had been requested, for the "welfare fund." He said that he gave the money to the defendant "because I felt I had to" and ". . . I had heard that, in fact I had seen, I could look down the street and see Mr. Doherty's job, and I seen the procedure of the work, and I thought it would be best to go along with the crowd." There was further, competent testimony by Duval, an employee of the Hawthorne Company, that at Hawthorne's instructions in September 1952, he had sent $1000 of company funds to the defendant. On cross-examination, Hawthorne testified that no threats were made by the defendant and that he did not think he had been "shook-down." Defendant argues that the government was bound by the assertion of its own witness that there had been no shakedown. This is not the case. While the witness' notion, on cross-examination, of a shakedown was relevant, it was not conclusive. The government is not bound by the testimony of prosecution witnesses. The jury is free to believe part of what a witness says and discount the rest. *United States v. Gordon*, 3 Cir., 1957, 242 F. 2d 122, 126, cert. denied, 1957, 354 U.S. 921; cf. *United States v. Frank*, 1956, W.D. Pa., 151 F. Supp. 866, 873, affirmed, 3 Cir., 1957, 245 F. 2d 284, cert. denied, 1957, 26 L.W. 3109. If the direct testimony of the witness did not completely establish an extortion, it tended to do so, which was all that was required to justify its admission for the purpose of showing intent or plan. Cf. *Commonwealth v. Heintz*, 1956, 182 Pa. Super. 331, 336, 126 A. 2d 498, 501. Situations are frequently so well understood that words are unnecessary.

In brief, there may be an extortion although no express threat is made. Cf. *Callanan v. United States*, 223 F. 2d 171, 175-176.

Defendant would concede the proposition that evidence of the commission of similar and related offenses tends to show "a consistent pattern of conduct highly relevant to the issue of intent." *Nye & Nissen v. United States*, 1949, 336 U.S. 613, 618. Citing *Farkas v. United States*, 6 Cir., 1924, 2 F. 2d 644, he denies that criminal intent was in issue since, it is argued, the crime under 18 U.S.C.A. §1951 consisted of the obtaining of money by the making of threats of economic loss and did not depend on the actor's intent. However, there is no question that intent was an ingredient of the offense charged even though the term is not employed in the statute. *Morisette v. United States*, 1952, 342 U.S. 246; see *United States v. Varlack*, 225 F. 2d 665, 668. Evidence of other offenses was not, in the present prosecution, admitted during the case in chief but on rebuttal after the defendant had admitted the receipt of money from Rider. He had explained the transaction as a business arrangement and corroborative testimony was offered to support his explanation. Since the transfer of money was conceded, and in itself innocent, evidence of the defendant's intention was material in determining whether his or the government's theory should be accepted. 2 Wigmore, Evidence §§302, 352(2), (3d ed. 1940); *United States v. Blount*, 2 Cir., 1956, 229 F. 2d 669, 671-672. Defendant also argues that if the testimony of the prosecution witness was to be believed at all, the necessary evil intent was established and there was no need for cumulative evidence on this issue. Nevertheless it was not improper to receive the evidence of other offenses as rebuttal in the circumstances of this case. Cf. *Harper v. United States*, C.A. D.C., 1956, 239 M. 2d 945, 947.

It is also urged that the evidence was not admissible to show scheme or plan, the other purpose for which it

was admitted. Evidence of another criminal act is admissible for such a purpose "if it is so related to or connected with the crime charged as to establish a common scheme or purpose so associated that proof of one tends to prove the other, or if both are connected with a single purpose and in pursuance of a single object. . . ." *Bracey v. United States*, C.A. D.C., 1944, 142 F. 2d 85, 88, cert. denied, 1943, 322 U.S. 762. Defendant's only objection to the court's instruction with respect to the testimony of other offenses was that there was no similarity or scheme shown by the evidence.* We disagree. The defendant's own statements reported by Doherty revealed an overreaching plan to compel the payment of money by employers. The statements that "you know I have a price tag of $35,000 on that job" and that "the contractors here and myself have made an agreement that there is a $35,000 take on this job," fairly disclose that the defendant followed a course of conduct of placing price tags on various jobs within his jurisdiction. The necessary showing of "plan" requires substantial similarity of offenses, not identity. Here there is propinquity of time and place; those who employed local labor were the victims; it could be conclusively found that the payment of money was motivated by fear of economic loss in each instance. There is a sufficient "concurrence of common features." 2 Wigmore, Evidence §304 (3d ed. 1940). Only in the Hawthorne case was there no evidence of the direct making of threats. This court is satisfied that the evidence of the multiple instances described above in light of the defendant's statements discloses that the acts charged in the indictment were undoubtedly part of the same determined plan for the levying of tribute. Cf. *United States v. Wall*, 7 Cir., 1955, 225 F. 2d 905, cert. denied, 1956, 350 U.S. 935; *Commonwealth v. Hradesky*, 1951, 170 Pa. Super. 24, 84 A. 2d 393, 395-396.

*Defense counsel's objection was "I except to the Court's charge as to other crimes, there being no similarity or scheme shown by the evidence." (R. 1436)

The defendant contends further that evidence of other crimes may be introduced to show scheme or plan only when the doing of the act is in issue and that in this instance the act was conceded. See 2 Wigmore, Evidence §§300(3), 304. However, that was far from being the case. Defendant admitted the payment of money and a business meeting. These concessions did not embrace the act alleged by the government: that of extortion initiated by the defendant at an essentially different meeting at a different time and place. There was a proper evidentiary foundation for the proof of scheme or plan.

The court rejects the contention that admission of such evidence was foreclosed by the pre-trial order of our associate Judge Herbert P. Sorg refusing consolidation of the present indictment with indictments charging the other offenses mentioned above. Consolidation of indictments may have been refused for numerous reasons; no memorandum or opinion accompanied the order. There is no basis for assuming the determination of such a pre-trial matter limited the trial court's inherent authority to admit relevant evidence in light of the circumstances arising at the trial.

The defendant argues that the court abused its discretion by permitting the government on cross-examination to range through a field of collateral, prejudicial inquiry. He concedes that having taken the witness stand, he enjoyed the same privileges but suffered the same limitations as any other witness. *Johnson v. United States*, 1943, 318 U.S. 189; *United States v. Bradley*, 3 Cir., 1945, 152 F. 2d 425, 426. The rule is that the cross-examination should be confined within reasonable bounds to the subjects of the direct examination, *Banning v. United States*, 6 Cir., 1942, 130 F. 2d 330, 337, cert. denied, 1942, 317 U.S. 695, but it nevertheless extends to any matter opened up by a party whether or not the

subject is strictly relevant. *United States v. Lowe*, 234 F. 2d 919, 922. Furthermore the defendant who takes the stand may have his credibility attacked in the same ways as any other witness and to that end the cross-examination is not limited to the scope of direct examination, *United States v. Lowe*, supra. Collateral inquiry within elastic limits is permissible for the purpose of impeaching the defendant's credibility. *United States v. Manton*, 2 Cir., 1938, 107 F. 2d 834, 835, cert. denied, 1939, 309 U.S. 664. The rulings of the court were within these limits.

However, the defendant says there was a violation of the rule that specific acts of misconduct not resulting in conviction of a felony or a crime of moral turpitude are not the proper subject of cross-examination for impeachment purposes. *Echert v. United States*, 8 Cir., 1951, 188 F. 2d 336; but see *United States v. Klaas*, 3 Cir., 1948, 166 F. 2d 373, 376 indicating the conflict of opinion on this matter. The author in 3 Wigmore, Evidence §982(1) suggests the examination should be confined to the trait of veracity and further that the defendant-witness is entitled to even greater protection from a possibly prejudicial inquiry into his history. §§891(3), 983(4). This rule, whatever its limit, is not the one with which the court was called upon to deal, for in this case the defendant's character had been placed in issue. That subject was opened during the cross-examination of the government's witness Moreschi, the president of the international union to which Local 1058 belonged. Moreschi's testimony was offered to show "[the defendant's] position in the labor organization, what his position is, the status of the management, what the District Laborers' Council is, what they do, to show Mr. Stirone's local labor position." While the ensuing examination did indicate the defendant's authority on a local level, it did not exceed the bounds of the offer. However on cross-examination, defense counsel elicited affirmative answers to the questions whether the defendant was "a good union man"

and "good for your union," a matter about which the government could not originally inquire. *Michelson v. United States*, 1948, 335 U.S. 469, 476. The effect of this exceeding the scope of direct examination by venturing into the subject of defendant's union qualifications was to constitute Moreschi a defense witness as to that issue. Morgan, Basic Problems of Evidence, Vol. 1, p. 62 (1954). The government's re-examination of the witness was then pursued in a permissively leading manner to the end of requiring the witness to define his terms. In this interrogation, questions, now complained of but proper in context, were posed suggesting the commission of abusive and improper acts by defendant in connection with union control.

The defendant's union character was again brought in focus during his direct examination when he traced his union career from the time of his youth, presenting a very detailed picture of humble origin, growing responsibilities and principled leadership. He described the peaceful means he used in union organizing and in furnishing guidance in setting up a pattern of organization and operation for the particular union. On cross-examination, he was asked whether he had ever sent out gangs of 200 and 300 men under instructions to drive workers off the job or to use strong-arm methods and whether he had sponsored an unauthorized taking-over of a local union in the Johnstown area. There was renewed inquiry about a dispute between the defendant's local and the international resulting in the suspension of the local, as the result of the expulsion, inferentially improper, of an individual from the union. While the cross-examination terminated the inquiry, the government made an offer to call witnesses present in the court-room for the purpose of showing that if the questions asked were damaging to defendant's cause, they were not idle. If the matters touched on by government counsel would not ordinarily have been proper subjects of inquiry, they became so

because the manner of the defendant's union activities had been opened by him. He could not then foreclose the interrogation to show that the impression he had created was false. Cross-examination as to whether he had employed unlawful or abusive methods was justified and relevant to the subject matter of the direct examination.

Further complaints are made regarding cross-examination concerning defendant's receipt of money from contractors other than Rider for the performance of services, his connection with the leasing of heavy construction equipment by his wife to local contractors, his private interest in other non-union operations and the union's payment of Mrs. Stirone's traveling expenses when she accompanied her husband on a business trip for the union. Some of these topics, for instance ths defendant's business activities, were merely elaboratione of matters touched upon in direct examination since the defendant had been presented as a union man and it was open to determine that he was not exclusively of that calling. Cf. *Branch v. United States*, 1948, 171 F. 2d 337; see also *Alford v. United States*, 1931, 282 U.S. 687. The business trip was an important item in the defense bearing on defendant's alibi and he himself first brought out the union's payment of his wife's expenses. However, the matters were obviously developed for the additional purpose of showing the defendant had done things which a union official should not do, thus directly affecting his character, and for reasons which have been stated were proper for that purpose. Cf. *United States v. Marino*, 2 Cir., 1956, 234 F. 2d 118, cert. denied, 1956, 352 U.S. 836.

Other errors are assigned with respect to the cross-examination as to items of income appearing in defendant's 1937 and 1938 income tax returns, his interest in a dairy farm and other matters. On these subjects, defendant was exposed to a type of detailed questioning not different from that used by his counsel in examining

some of the government witnesses for the purpose as stated of testing memory. On direct examination the defendant had displayed an apparently good memory for many small, unimportant matters far removed in time from the date of the examination. The reliability of his recollection was as important in the case as was that of the government's witnesses.

The foregoing account does not exhaust the defendant's assignments of errors which he says are merely illustrative. There is no need to itemize. The court does not agree with his contention that the sole purpose and effect of the cross-examination was to humiliate and degrade the defendant and increase the probability of conviction for crimes not charged. On the contrary, the court is satisfied that the defendant was convicted of the offense laid in the indictment and that the verdict is supported by substantial, credible evidence.

There is no basis for consideration of the defendant's fifty-fourth assignment of error. On September 25, 1957, a month and three days after the expiration of the period allowed defendant for filing reasons in support of his motion for a new trial, a paper entitled "Defendant's Amendment to Motion for New Trial" was filed setting forth the following statement:

> "The distribution of a handbook containing instructions for the jurors in this case was prejudicial to the defendant. On September 24, 1957, counsel for the defendant learned that Genevieve Barr, Chief Deputy Clerk of the District Court, distributed and delivered to each juror on or about June 4, 1957 a pamphlet or handbook containing instructions for jurors. The said handbook contains numerous inaccuracies which prejudiced the right of the defendant to a fair trial. *United States v. Gordon*, 7th C.C.A. (Major J), July 16, 1957."*

*26 L.W. 2043. A petition for rehearing before the court on bane was granted on October 23, 1957.

The caption of defendant's paper could not cause it to relate back to the time of the filing of the original motion and supporting reasons because the limitation of time provided for in Rule 33, F.R.Cr.P., 18 U.S.C.A., is mandatory. Rule 45(b) (2), F.R.Cr.P., 18 U.S.C.A. The purported amendment must therefore be treated as a motion made on the ground of newly discovered evidence since it was not presented within the period permitted by the court during the five days following the verdict. *United States v. Bertone*, 3 Cir., ... F. 2d ..., (decided November 1, 1957); see *United States v. Smith*, 1947, 331 U.S. 469, rehearing denied, 1947, 332 U.S. 784. Two of the conditions which must be satisfied before the court may award a new trial on the basis of newly discovered evidence are (1) that the evidence must in fact be newly discovered and (2) that there be facts alleged from which the court may infer diligence on the part of the movant in discovering such evidence. *United States v. Bertone*, supra; *United States v. Rutkin*, 3 Cir., 1953, 208 F. 2d 647, 649. By the motion, the court is told that counsel for defendant first learned on September 24, 1957, of the distribution of the pamphlet to the jurors and by a stipulation that counsel would, if necessary, so testify. This court accepts these statements as sufficient compliance with the first condition mentioned above, but it is obvious from the moving papers that there has been no showing of diligence on the part of the defendant in discovering the facts which are the basis of his motion. If it was error to distribute handbooks to the jurors, it was error to do so before the handing down of the opinion in *United States v. Gordon*, 7 Cir., supra. The distribution of such handbooks in civil and criminal cases has been common practice in this court for seven years and chief counsel for defendant, a distinguished, experienced member of the bar of this court, is chargeable with knowledge of its customs. The argument that the court may without regard to time award a new trial "in the interest of justice" must be rejected. *United States v. Smith*, supra.

Other points preserved by argument or brief do not require written analysis. The motion for arrest of judgment is denied without discussion since the sufficiency of the indictment was upheld by Judge Sorg on defendant's pre-trial motion to dismiss. *TCF Film Corporation v. Gourley*, 3 Cir., 1957, 240 F. 2d 711. For the reasons stated in this opinion, the motion for acquittal or in the alternative for a new trial will be denied.

An appropriate order is entered.

ORDER

AND NOW, December 5, 1957, it is ORDERED that the defendant's motions for arrest of judgment, and for judgment of acquittal or a new trial be, and the same hereby are, denied. It is FURTHER ORDERED that the United States Attorney produce the defendant before this court for imposition of sentence on December 11, 1957 at 10:00 A.M.

(s) JOHN L. MILLER
United States District Judge

CC: VINCENT M. CASEY, *Esq.*
720 Grant Building
Pittsburgh 19, Pennsylvania

HONORABLE D. MALCOLM ANDERSON
United States Attorney
633 New Federal Building
Pittsburgh 19, Pennsylvania

XI

MOTION FOR JUDGMENT OF ACQUITTAL OR A NEW TRIAL

AND NOW this 24th day of June, 1957, comes Nicholas A. Stirone, defendant above-named, by his respective attorneys, and renews his Motion for Judgment of Acquittal made at the close of all the evidence in this case said Motion having been denied, and in the alternative moves the Court to grant him a new trial in accordance with the Federal Rules of Criminal Procedure for the following reasons:

1. The Court erred in denying defendant's Motion for Acquittal at the conclusion of the evidence offered by the government.

2. The Court erred in denying defendant's Motion for Judgment of Acquittal made at the conclusion of all the evidence in the case.

3. The verdict is contrary to the evidence and to the weight of the evidence.

4. The verdict is not supported by substantial or sufficient evidence.

5. The verdict is contrary to the instructions and charge of the Court.

6. The Court erred in its charge to the jury on the question of whether or not the government had proved interstate commerce in order to bring the charges in the Indictment within the purview of Section 28 U.S.C.A. 1951.

7. The Court erred in permitting the Government to introduce evidence of George T. Doherty, Andrew Hawthorne and August C. Duval to show plan, scheme and design when said evidence did not show plan, scheme and design.

8. The Court erred in permitting Government's counsel to introduce the testimony of George T. Doherty in rebuttal for the purpose of attempting to show plan, scheme and design when his Honor, Judge Herbert L. Sorg refused to permit a consolidation of the case of United States v. Nicholas A. Stirone at No. 14872 Criminal with this case which at the time of the trial of this case was pending and is still pending. The Government in requesting consolidation of the trial urged the very same reasons for consolidation as it did at the time of trial of the instant case. That the introduction of said evidence of George T. Doherty was highly prejudicial and did not prove plan, scheme or design but rather was introduced only to prejudice the case of the defendant by showing other unrelated crimes contrary to law.

9. The Court erred in permitting Government's counsel to introduce the testimony of Andrew Hawthorne for the purpose of attempting to show plan, scheme and design when his Honor, Judge Herbert L. Sorg refused to permit a consolidation of the case of United States v. Nicholas A. Stirone at No. 14773 Criminal with this case which at the time of the trial of this case was pending and is still pending, and further, the admission of said evidence was highly prejudicial for the reason that the said Indictment at No. 14773 charges a violation of 29 U.S. C. A. sec. 186. otherwise commonly known as the Taft-Hartley Law, and entirely dissimilar to the instant case which charged violation of the Hobbs Act.

10. That the Court, after erroneously permitting the Government to introduce the testimony of George T. Doherty and Andrew Hawthorne for the reasons stated in Paragraphs 8 and 9, erred in refusing defendant's counsel reasonable time to prepare a defense to the charges testified to by George T. Doherty and Andrew Hawthorne which charges are contained in separate indictments, and

in effect made the defendant defend three indictments when in a written notice dated May 1, 1957, from the United States Attorney's Office, defendant's counsel was advised that the case of United States v. Nicholas A. Stirone at 14871 Criminal would be called for trial on June 4th, and that he would be called upon only to meet the charges contained in that indictment.

11. The Court erred in permitting Government's counsel to introduce evidence of August C. Duval who testified that $1,000.00 in ten and one-hundred bills was sent to the defendant at the Waldorf-Astoria in New York City when his testimony had no probative value due to the fact that he testified he did not know for what reason said money was sent.

12. The Court erred in permitting Government's counsel to introduce testimony of George T. Doherty, Andrew Hawthorne and August C. Duval in rebuttal. The admission of this testimony was not proper because the rebuttal was not on a relevant or material matter but on a collateral matter.

13. The Court erred in permitting Government's counsel to inspect the minutes of Local 1058 International Hod Carriers' Building and Common Laborers' Union of America which were marked as an exhibit and placed in the custody of the Court while the Court decided whether or not to permit the introduction of said minutes as evidence. That before the Court made its ruling the Government's counsel took the books out of the custody of the Court and examined the books overnight. The Court did not make a ruling on the defendant's objection and the minutes were not introduced into evidence. Government's counsel obtained information from said minute books which was highly prejudicial to the defendant's case and thwarted his defense.

14. The Court improperly limited cross-examination of prosecuting witnesses, William G. Rider, Jeanne

Rider, George T. Doherty, Andrew Hawthorne and August C. Duval.

15. The Court erred in permitting Government's counsel to cross-examine defendant over defendant's counsel's objection on his 1937-1938 Income Tax Returns. The introduction of this testimony violated the defendant's constitutional rights as set forth in Amendments 4 and 5 of the United States Constitution as well as permitting Government's counsel to cross-examine defendant on a matter that was immaterial, irrelevant and collateral.

16. The Court erred in permitting defendant Stirone to be questioned on many irrelevant, immaterial and collateral matters concerning his activities as a labor leader.

17. The Court erred in permitting Government's counsel over objection by the defendant to interrogate the defendant on whether or not he had committed other crimes or conducted himself or gave orders which if true would amount to commission of other crimes.

18. The Court erred in permitting defendant to be cross-examined as to many of his private transactions which were irrelevant, immaterial and collateral and, therefore, highly prejudicial to the defendant.

19. The Court on many instances improperly curtailed the cross-examination by defendant's counsel of government witnesses to the prejudice of the defendant.

20. The Court erred in refusing defendant's counsel a recess in order to inspect and examine records of the Buncher Bros. Company for the purposes of contradicting the testimony of George T. Doherty to the effect that the Buncher brothers received thousands of dollars of non-ferrous metals. The refusal of this reasonable request was highly prejudicial to the defendant's case.

21. The Court erred in refusing defendant's counsel's request to introduce evidence through members of Local 178 House Wreckers and Scrap Yard Laborers' Union that certain scrap was surreptitiously shipped to Detroit, Michigan and to other scrap dealers by George T. Doherty when he testified in chief that all scrap material was sent to Buncher Brothers under a written agreement.

22. The Court erred in permitting Government's counsel to interrogate defendant's character witnesses concerning many rumors of extortion and other matters when the Government's counsel failed to prove such rumors.

23. The Government's counsel, in his closing address, made highly prejudicial remarks in calling the defendant, Nicholas A. Stirone, "Czar Nicholas" and various other names which were highly inflammatory, unwarranted and prejudicial.

24. The Government's counsel, in his closing argument, made highly prejudicial remarks concerning the defendant's 64 character witnesses. In effect he argued that the 64 character witnesses that were called on behalf of the defendant were bought off, afraid of physical violence and expected to curry favor by testifying for him. These remarks and innuendos were highly inflammatory, unwarranted, unfair and prejudicial.

25. The Court erred in refusing certain testimony offered by the defendant.

26. The Court erred in admitting certain evidence offered by the Government.

27. The Court erred in refusing to strike out the testimony of William G. Rider for the reason that his testimony did not support the charge in the Indictment and the Bill of Particulars.

28. The Court erred in refusing to strike out the

testimony of George T. Doherty for the reason that the said testimony was not proper rebuttal and if this testimony was relevant, competent and material it should have been introduced in the Government's case in chief.

29. The Court erred in not striking out the testimony of Andrew Hawthorne for the reason that his testimony was not proper rebuttal and for the further reason that his testimony was to the effect that no monies were extorted from him and any payments of money made to the defendant were voluntary.

30. The Court erred in its charge to the jury on the law as to plan, scheme and design.

31. The Court erred in its charge to the jury on the law of character testimony.

32. The Court improperly admitted the testimony of Jeanne Rider, a Government witness, concerning a conversation between said Jeanne Rider and her husband, William G. Rider. Said testimony was hearsay, irrelevant, immaterial and imcompetant.

3. The Government failed to prove the elements of the offenses charged.

34. Defendant's rights were violated by the issuance of subpoenaes on the part of the Government which required the witnesses to appear at the United States Attorney's Office and not in the District Court.

35. The Court erred in reading Paragraphs 4, 5 and 6 of the Indictment.

36. The Court erred in charging the jury as to fear, there being NO evidence of same or any evidence of which an inference could be drawn.

37. The Court erred in charging the jury that the defendant was an influential man in labor and an important figure in labor.

38. The Court erred in its instructions to the jury

relating to payments made because of fear, there being no evidence of same.

39. The Court erred in its charge to the jury that it was immaterial as to the influence of Stirone in regard to labor troubles.

40. The Court erred in not withdrawing a juror upon motion of defendant's counsel during the trial of the case.

41. The Government did not prove a violation of the Act of Congress.

The defendant reserves the right and respectfully requests leave to assert and file additional reasons for his Motion when the testimony and Court's charge in this case are transcribed.

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Attorneys for Defendant

ORDER OF COURT

AND NOW, this day of , 1957, on motion of defendant's counsel, it is hereby ordered and decreed that the defendant shall have thirty (30) days after the testimony and Judge's charge are transcribed to file additional reasons in support of his Motion for Judgment of Acquittal or a New Trial.

XII

ADDITIONAL REASONS FOR NEW TRIAL

AND NOW, August 21, 1957, comes Nicholas A. Stirone, defendant above-named, by his attorneys, and files the following additional reasons for new trial:

42. The Court erred in admitting the testimony of Doherty, Hawthorne and Duval.

43. The Court erred in not charging the jury as to the Statute of Limitations.

44. The general conduct of the trial on the part of the Government attorneys was unfair to the defendant.

45. The defendant was not afforded a trial according to due process.

46. The general atmosphere of the trial and the conduct thereof was prejudicial to defendant.

47. The Court erred in overruling defense counsel's objection to the testimony of witness Laffey with reference to defendant being on the list of creditors.

48. The Court erred in overruling defense counsel's objection to questions relating to support of wife and children.

49. The Court erred in overruling defense counsel's objection to questions relating to the commission of crimes of violence by force or strong-arm methods.

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Attorneys for Defendant

ADDITIONAL REASONS FOR NEW TRIAL

AND NOW, August 22, 1957, comes Nicholas A. Stirone, defendant above-named, by his attorneys, and files the following additional reasons for new trial:

50. The Court erred in allowing, over defense counsel's objections, improper questions on direct examination of the Government witness Moreschi, which questions related to irrelevant, incompetent and immaterial matters prejudicial to the defendant.

51. The Court erred in allowing, over defense counsel's objections, improper questions on direct examination of the Government witness Moreschi, which were beyond the scope of the Government's offer and prejudicial to the defendant.

52. The Court erred in sustaining the Government's objections to certain questions of the defense counsel on cross-examination of the Government witness Moreschi, and otherwise improperly restricting the cross-examination of Moreschi.

53. The Court erred in allowing, over defense counsel's objections, improper redirect examination of the Government witness Moreschi, which testimony was an attempt to impeach and contradict the testimony of said witness given on cross-examination.

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Attorneys for Defendant

Amendment to Motion for New Trial

XIII

DEFENDANT'S AMENDMENT TO MOTION FOR NEW TRIAL

AND NOW, this 25th day of September, 1957, comes Nicholas A. Stirone, defendant above named, by his attorneys, and hereby files an amendment to his motion for new trial, and in support thereof assigns the following reason:

54. The distribution of a handbook containing instructions for the jurors in this case was prejudicial to the defendant. On September 24, 1957, counsel for the defendant learned that Genevieve Barr, Chief Deputy Clerk of the District Court, distributed and delivered to each juror on or about June 4, 1957 a pamphlet or handbook containing instructions for jurors. The said handbook contains numerous inaccuracies which prejudiced the right of the defendant to a fair trial. U.S. v. Gordon, 7th C.C.A. (Major, J), July 16, 1957.

Signed MARCIOTTI & CASEY

VINCENT M. CASEY

V. J. RICH

Attorneys for Defendent

XIV

STIPULATION

It is hereby stipulated and agreed by and between D. Malcolm Anderson, United States Attorney for the Western District of Pennsylvania, and Hubert I. Teitelbaum, First Assistant United States Attorney, attorneys for the government, and Vincent M. Casey, Esquire, and Veto J. Rich, Esquire, attorneys for defendant Nicholas A. Stirone, that the attached Handbook for Jurors is a copy of and similar to the handbook that was distributed to members of the panel from which the jury was selected in the above captioned matter by the Clerk of Courts; and that if Vincent M. Casey, Esquire, and Veto J. Rich, Esquire, should be called upon to give testimony in this matter they would testify that they first learned that copies of the attached handbook were distributed to this jury panel on September 24, 1957.

D. MALCOLM ANDERSON
United States Attorney

HUBERT I. TEITELBAUM
First Assistant U. S. Attorney
Attorneys for Plaintiff

VINCENT M. CASEY

VETO J. RICH
Attorneys for Defendant

Date Nov. 12, 1957

Indictment No. 14872

XV

IN THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA
vs.
NICHOLAS A. STIRONE

NO. 14872
CRIMINAL

THE GRAND JURY CHARGES:

1. That at all times hereinafter mentioned a part of the interstate commerce of the United States has consisted of the transportation between the several states of men, materials and supplies for use in the demolition of a building and the transportation between the several states of the scrap steel, iron, brass, copper, lead, zinc and other metals obtained from the demolition of said building.

2. That at all times hereinafter mentioned, the Doherty Lumber and Wrecking Company was a party to certain contracts to demolish a certain building known as the Carnegie Building, in Pittsburgh, Pennsylvania, and to sell the scrap iron, steel, brass, copper, lead, zinc, and other metals obtained from said demolished building for transportation between the various states of the United States and for subsequent use in the manufacturing of products to be transported between the various states of the United States, and more particularly, from the State of Pennsylvania to various other states; and at said times, Doherty Lumber and Wrecking Company was engaged in an industry affecting commerce between the states of the United States.

3. That in the performance of its contracts as set forth in paragraph two, Doherty Lumber and Wrecking

Company caused the transportation of men, supplies, material, and machinery in interstate commerce from various points in the United States into the State of Pennsylvania and to various points outside the State of Pennsylvania from the State of Pennsylvania.

4. That at all times hereinafter referred to, Nicholas A. Stirone was President of Local No. 1058, International Hod Carriers, Building and Common Laborers Union of America, affiliated with the American Federation of Labor; President of the Heavy Engineering, Railroad Contracting and Highway Construction Council, American Federation of Labor, which council is composed of the United Brotherhood of Carpenters and Joiners of America, International Union of Operating Engineers, International Hod Carriers, Building and Common Laborers Union of America and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and President of the Laborers District Council of Western Pennsylvania, American Federation of Labor and was a representative of employees of the Doherty Lumber and Wrecking Company.

5. That at all times hereinafter mentioned, George T. Doherty was President of the Doherty Lumber and Wrecking Company.

6. That commencing on or about March 1, 1952, the exact date being to the Grand Jurors unknown, and continuing thereafter up to on or about Febraury 28, 1953, in the Western District of Pennsylvania, and within the jurisdiction of this Court, Nicholas A. Stirone, well knowing all matters of fact aforesaid, did knowingly, wilfully and unlawfully obstruct, delay and affect interstate commerce between the several states of the United States and the movement of men, materials and supplies in such commerce, by extortion, to wit, by obtaining property in the form of money and other things of value in an amount in excess of $10,000.00, the exact sum being to the Grand Jurors unknown, from persons acting for

and on behalf of the Doherty Lumber and Wrecking Company, induced by the wrongful use of threats of labor dispute, obstruction of the performance of the contracts referred to in paragraph two, fear, and by use of actual and threatened force and violence.

7. Defendant threatened and caused to be committed acts of violence to the property of the Doherty Lumber and Wrecking Company.

8. Defendant caused George T. Doherty to fear that the performance of the contracts referred to in paragraph two would be delayed and that the Doherty Lumber and Wrecking Company would suffer financial loss in performance of said contracts and that officers, agents and property of said company would be injured and damaged if defendant did not obtain property as stated in paragraph six.

9. Defendant Nicholas A. Stirone threatened the said George T. Doherty, President of the Doherty Lumber and Wrecking Company, that defendant would, in his capacity as a labor representative, wrongfully and corruptly embark upon a course of oppressive action against the Doherty Lumber and Wrecking Company by calling strikes, labor disputes, work stoppage, and difficulties in connection with the said demolition work, and other labor troubles, under various pretexts and claims of right, under the guise of representing various labor organizations and their members.

Contrary to the terms and provisions of Section 1951, Title 18, United States Code.

A True Bill

_____

Foreman

_____

D. MALCOLM ANDERSON
United States Attorney

Indictment No. 14873

XVI

IN THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA
v.
NICHOLAS A. STIRONE

NO. 14873
CRIMINAL
(29 U. S. C. Section 186)

THE GRAND JURY CHARGES

1. That at all times hereinafter mentioned, a part of the interstate commerce of the United States has consisted of the transportation of scrap iron, steel, copper, brass, lead, zinc and other metals and the products manufactured from said metals between the various states of the United States; and that a further part of said commerce has consisted of the construction of highways and bridges which are a facility of commerce and transportation between the several states of the United States.

2. At all times hereinafter mentioned, Robert Hawthorne, Inc., was a party to several contracts for the demolition of several buildings in the City of Pittsburgh, Pennsylvania, and the sale of scrap iron, steel, brass, lead, zinc, copper and other metals from said buildings, which metals were sold and transported from Pennsylvania to various other states.

3. That at times hereinafter mentioned, Robert Hawthorne, Inc., was a party to contracts calling for demolition of buildings so as to enable the construction of highways and bridges which are facilities of commerce and transportation between the several states of the United States.

4. That at times hereinafter referred to Andrew Hawthorne and August Duval were officers, agents or employees of the said Robert Hawthorne, Inc.

5. That as a result of the performance of contracts referred to in paragraphs two and three, Robert Hawthorne, Inc. caused and brought about the demolition of certain buildings in Pittsburgh, Pennsylvania, to enable the construction of bridges and highways which will serve and be a facility of interstate commerce and as a result of said demolitions, scrap iron, steel, brass, copper, lead, zinc and other metals were sold and transported in various states of the United States and were used in the manufacture of metal products which were sold and transported in various states of the United States and from Pennsylvania to various other states; and is engaged in an industry affecting commerce between the several states.

6. That at all times hereinafter referred to, Nicholas A. Stirone was President of Local No. 1058, International Hod Carriers, Building and Common Laborers Union of America, affiliated with the American Federation of Labor; President of the Heavy Engineering, Railroad Contracting and Highway Construction Council, American Federation of Labor, which council is composed of the United Brotherhood of Carpenters and Joiners of America, International Union of Operating Engineers, International Hod Carriers, Building and Common Laborers Union of America and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; and President of the Laborers District Council of Western Pennsylvania, American Federation of Labor, and was a representative of employees of Robert Hawthorne, Inc.

7. That commencing on or about March 1, 1952, the exact date being to the Grand Jurours unknown, and continuing thereafter until on or about July 8, 1953,

in the Western District of Pennsylvania and within the jurisdiction of this Court, defendant Nicholas A. Stirone, well knowing all matters of fact aforesaid, did knowingly, wilfully and unlawfully accept and receive, and agree to accept and receive, from Robert Hawthorne, Inc., acting through its officers, agents or employees, Andrew Hawthorne and August Duval, money or other property of value in a sum in excess of $4,000.00.

Contrary to the terms and provisions of Section 186, Title 29, United States Code.

A True Bill

_____

Foreman

_____

D. MALCOLM ANDERSON
United States Attorney

XVII

JUDGMENT AND COMMITMENT

On this 12th day of December, 1957 came the attorney for the government and the defendant appeared in person and by counsel (Vincent Casey, Esq., and Veto Rich,)

IT IS ADJUDGED that the defendant has been convicted upon his plea of Not Guilty and a verdict of Guilty of the offense of Ct. 1: Knowingly obstructing interstate commerce and movement of materials and supplies therein by extortion as charged in one (1) Count and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convited.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Three (3) years, and is directed to pay a fine of Five Thousand ($5,000.00) Dollars, and cost of prosecution.

IT IS ADJUDGED that

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

JOHN L. MILLER /s/

United States District Judge.

The Court recommends commitment to:

JAMES H. WALLACE, JR., /s/

Clerk.

[fol. 527]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,543

UNITED STATES OF AMERICA,

v.

NICHOLAS A. STIRONE, Appellant.

Appeal From the United States District Court for the Western District of Pennsylvania

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Argued September 18, 1958
Before Goodrich, Staley and Hastie, Circuit Judges.

OPINION OF THE COURT—Filed December 9, 1958

By GOODRICH, Circuit Judge.

This is an appeal from a judgment of conviction rendered in the Western District of Pennsylvania in a prosecution under the Hobbs Act, 18 U.S.C. § 1951. That statute penalizes anyone who "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion . . ."[1] Extortion is defined as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear . . ."[2]

The verdict of the jury came following a long, hard fought trial. Defendant, in this appeal, raises many questions [fol. 528] which he claims were incorrectly decided by the district court whose careful and thorough opinion may be found in —— F. Supp. —— (W.D.Pa. 1957).

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[1] 18 U.S.C. § 1951(a) (1951).

[2] 18 U.S.C. § 1951(b)(2) (1951).

Defendant, a labor union official, was alleged to have extorted money from a man named William G. Rider who was in the business of supplying ready-mixed concrete. The Government's version of the facts, accepted by the jury, was that the defendant had come to Rider, following Rider's entering into a profitable contract to supply mixed concrete for the construction of a steel mill in Allenport, Pennsylvania, and that he had threatened Rider with the loss of that contract if he did not give the defendant fifty cents a cubic yard for all concrete furnished for this job. The sufficiency of this recital to justify conviction under the statute will be considered later. Defendant's first contention is that interstate commerce was in no way affected by his actions.

I. Interstate Commerce

The interstate commerce question is simpler than the defendant's argument would have it appear. In making this ready-mixed concrete Rider bought sand which was pumped out of the Ohio River in Ohio, West Virginia or both. The Duquesne Sand Company, which pumped the sand from the river, sold it to Duquesne Slag Products Company. It was on Slag Products Company's land that Rider's operations for the contract mentioned were being carried on. It is sufficient to point out, to settle this part of the case, that some of the barges of sand were brought into Pennsylvania, consigned to Rider and unloaded by him at the place where his work was being carried on. This sand came from outside Pennsylvania. Whether it was consigned directly to Rider or was consigned to Duquesne Slag but delivered to Rider does not matter. There was interstate commerce in the process.

It is not necessary that this should have been the progress of all the sand; it is enough that there was evidence that [fol. 529] a considerable quantity was sent to Rider in this way. We do not need to worry ourselves with the problem of material having come to rest from an interstate commerce journey and then having something else done to it after it has reached its destination. The facts, as to some of this sand at any rate, are as clear as if a Philadelphia

baking concern, through a broker, ordered flour to be shipped from Minneapolis to him at Philadelphia. *Hulahan v. United States*, 244 F.2d 441 (8th Cir. 1954), is in point here; likewise its predecessor, *Nick v. United States*, 122 F.2d 660 (8th Cir. 1941). See *NLRB v. International Rice Milling Co., Inc.*, 341 U.S. 665 (1951).

So far, so good; interstate commerce was involved in the delivery of this sand to Rider and if such commerce was affected by extortion on the part of the defendant there is an offense committed under the Hobbs Act.

There is another phase of the interstate commerce point, however, which presents more difficulty. The second paragraph of the indictment charged that Rider was a party to a contract "for the erection of a steel processing plant at Allenport, Pennsylvania, and, for the purpose of performing said contract, caused supplies and materials to move in interstate commerce between various points in the United States and the site of his plant for the manufacture of the mixing of ready mixed concrete. . . ." The connection of this charge with the facts shown about the shipment of the sand has already been discussed.

During the course of the trial a witness from the steel company whose plant was being built at Allenport gave evidence that when the steel mill was completed it would ship much of its product out of the state of Pennsylvania, notably to Michigan and Kentucky. The court, in its charge, told the jury that if it was satisfied "that Mr. Rider's concrete was used for constructing a mill which would manufacture articles of steel to be shipped in interstate commerce" and if they believed the defendant extorted money from Mr. Rider they were instructed "as a matter [fol. 530] of law that there has been a substantial effect on interstate commerce shown by the United States."

There are two questions raised by this. The first has to do with whether the indictment covers this phase of the alleged crime and whether, if not, there is a fatal variance between indictment and proof. As said above, the indictment charged interference with interstate commerce on the receiving, not the sending end, except by stating that the sand was for a steel mill.

If there was a variance, no harm was done by it and it is not a source of reversible error. The defendant was not surprised; the testimony about the destination of the product of the mill was objected to, but counsel's argument against it was directed to the substantive law concerning the scope of interstate commerce. The record discloses that counsel was prepared for the introduction of the testimony rather than surprised by it. It is now too late to raise the point. See the discussion in *Berger* v. *United States*, 295 U.S. 78 (1935).

The second question under this head is the correctness of the charge as a matter of substantive law. Is an interference with a man who is furnishing material for a mill which, when completed, will manufacture products which, if successfully marketed, will be shipped out of the state close enough to interstate commerce to be made a federal offense? It is to be noted that the language used in the statute is very broad, seemingly intended to cover all that federal legislation can cover in this regard.[3]

We find a helpful authority in *Mitchell* v. *Vollmer & Co., Inc.*, 349 U.S. 427 (1955). There employees engaged in construction of a lock which, when completed, was to be part of the Gulf Intercoastal Waterway, were held to be engaged in commerce within the meaning of the Fair Labor Standards Act. While the lock, when done, was to become an instrumentality of commerce, while it was in the process [fol. 531] of construction it was as much in the preparatory stage as the steel mill here. And in *Reed* v. *Pennsylvania Railroad Co.*, 351 U.S. 502 (1956), the Supreme Court, reversing our decision in 227 F.2d 810, held that the Federal Employers' Liability Act applied to an office worker whose duties were to file tracings of the company's rolling stock, equipment and structures. The *Vollmer* decision was held by the Fifth Circuit last year to include within "interstate commerce" the building of a causeway over which interstate traffic would flow when it was completed. *Archer* v. *Brown & Root, Inc.*, 241 F.2d 663 (1957). The decision also

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[3] See 18 U.S.C. § 1951(b)(3) (1951). "The term 'commerce' means . . . and all other commerce over which the United States has jurisdiction."

brought within "interstate commerce" the production of material for the causeway construction and the construction of a plant which when completed would produce materials to be used in the causeway construction. The only difference between this last aspect of the *Archer* case, supra, and the case at bar is that in the case at bar the plant, when completed, will produce materials which themselves will move in interstate commerce, whereas the material to be produced by the plant in *Archer* would be used for further construction. On principle the cases are indistinguishable.

The court in *Archer* declined to state whether it thought that *Vollmer* had swept away all the prior learning on the question of what touched or concerned interstate commerce sufficiently to be made the subject of federal regulation. See also *Mitchell* v. *Hodges Contracting Co.*, 238 F.2d 380 (5th Cir. 1956). Nor do we here. It is sufficient that we think to apply the federal regulation to the case in hand is within current authorities.[4]

[fol. 532]

II. Sufficiency of the Evidence

We now turn to the defendant's contention that the evidence was insufficient to sustain a conviction. This point we can dispose of very quickly. The testimony of Rider and Mrs. Rider, if believed, is sufficient to support a finding that Rider was forced to pay this money to Stirone through fear of economic loss to his profitable business with the company constructing the steel mill. It is true that argu-

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[4] In Mitchell v. Hodges Contracting Co., 238 F.2d 380 (1956), the Fifth Circuit brought within the ambit of the Fair Labor Standards Act employees engaged in the construction of a new radio-television building for a local newspaper. Although television was a new enterprise for the newspaper, it previously had operated a radio station. The court, in applying the Fair Labor Standards Act to the construction, stated that the prior existence of the radio station removed it from "any status of naked 'new' construction for an activity not yet in being." 238 F.2d at 384. See also United States v. Newjer Contracting Co., 161 F. Supp. 867 (D. N.J. 1958), in which the court held that employees of a construction company engaged in construction work on a super highway which when completed would facilitate the flow of traffic to other states were within the Fair Labor Standards Act.

ment could be made to the contrary. But the argument to the contrary was made to the jury. Indeed, defendant denied that he was at the place where Rider said he was on the day of the alleged conversation and denied that the conversation ever took place. All this, however, is settled by the finding of the jury and that finding is amply supported in the testimony. Reasonable fear of economic loss is enough to come within the statute. *Bianchi* v. *United States*, 219 F.2d 182, 194 (8th Cir. 1955).

III. Evidence of Similar Offenses

The prosecution, over objection, was permitted in rebuttal to introduce testimony of similar offenses by the defendant. These extortions, or coerced payments of money, if they took place, occurred following the incident of which Rider complains. This testimony had been offered in the Government's case in chief but the trial judge refused it. Later it was received as showing intent, scheme, plan or design.

The question of the admissibility of evidence of offenses other than the one for which the defendant is on trial is a very difficult one. Contradictory statements abound in the decisions and the judicial crop has been subjected to severe criticism by writers of law review articles.[5] The difficulty [fol. 533] is one which is inherent in the nature of the problem.[6] Anyone obligated to determine the guilt or innocence of a defendant charged with a particular crime invariably would be influenced by a showing that the defendant commits crimes in general. Certainly it is probative to prove that a defendant in a criminal case is a man who commits crimes. This showing is strengthened by evidence that he has committed other crimes similar to the one with

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[5] The following articles contain a careful consideration of the problems in this area. Stone, *The Rule of Exclusion of Similar Fact Evidence: England*, 46 Harv. L. Rev. 954 (1933); Stone, *The Rule of Exclusion of Similar Fact Evidence: America*, 51 Harv. L. Rev. 988 (1938).

[6] "It is hopeless to attempt to reconcile the precedents under the various heads; for too much depends on the tendency of the Court in dealing with a flexible principle." 2 Wigmore, Evidence § 302 at 201 (3d ed. 1940).

which he is now charged. The trouble is that while such evidence is probative it is highly prejudicial and a court or jury may find itself determining in general whether the defendant is a bad man rather than whether he committed a particular crime.

So, the general rule, as stated by most courts, is that evidence of other offenses is inadmissible in a criminal prosecution for a particular crime. This rule is qualified by a number of exceptions stated in terms of the capacity of the evidence to prove some specific fact or issue such as intent, plan, scheme or design. *E.g., United States* v. *Klass*, 166 F.2d 373, 377 (3d Cir. 1948); *United States* v. *Bradley*, 152 F.2d 425 (3d Cir. 1945). But since the range of relevancy, other than for the purpose of showing criminal propensity, is almost infinite,[8] we think the rule may be phrased a little less mechanically. Evidence of other offenses may be received if relevant for any purpose other than to show a mere propensity or disposition on the part of the defendant to commit the crime.[9]

[fol. 534] Of course the trial judge may, in the exercise of his sound discretion, exclude evidence which is logically relevant to an issue other than propensity, if he finds that the probative value of such evidence is substantially outweighed by the risk that its admission will create a substantial danger of undue prejudice. *United States* v. *Feldman*, 136 F.2d 394, 399 (2d Cir. 1943); *United States* v. *Shurtleff*, 43 F.2d 944, 947-48 (2d Cir. 1930). See Uniform

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[7] McCormick, Evidence § 127 at 328-31 (1954). See Note, 29 Mich. L. Rev. 473. (1931).

[8] *Id.* at 327.

[9] Even this general statement must be qualified in prosecutions for sex offenses. A number of jurisdictions admit evidence of other similar offenses where offered to prove propensity for illicit sexual relations with a particular person. *E.g.*, Hodge v. United States, 126 F.2d 849 (D.C. Cir. 1942) (incest); State v. Terry, 199 Iowa 1221, 203 N.W. 232 (1925). (incest); Sykes v. State, 112 Tenn. 572, 82 S.W. 185 (1904) (statutory rape). An extensive annotation on the subject is contained in 167 A.L.R. 565. A few decisions have admitted evidence of sex crimes with persons other than the particular person involved in the crime on trial. Compare Fairbanks v. United States, 226 F.2d 251 (D.C. Cir. 1955), with Commonwealth v. Kline, 361 Pa. 434, 65 A.2d 348 (1949).

Rules of Evidence 55, 45; Model Code of Evidence Rule 303 (1942). But it must be borne in mind that the greater the probative force of the evidence, the more likely it is to be prejudicial to the party against whom it is offered.

In this case we think that there was no abuse of discretion in receiving the testimony. Rider testified that the defendant had interviewed him at his place of business on a certain date and that the defendant had threatened him with labor trouble if he did not make payments to the defendant. Stirone denied this meeting at the time and place specified but he admitted having collected money from Rider which he said was a fair and legitimate commission for services rendered in securing for Rider a profitable contract. The defendant argues that if Rider's testimony is believed the nature of the relationship between the defendant and Rider was proved and this other evidence was unnecessary. But the question before the jury was whether Rider's story was to be believed or not, the defendant having vehemently denied it. The evidence in question was, therefore, relevant to explain Stirone's purpose or intent in soliciting money from Rider. See *United States v. Blount*, 229 F.2d 669, 671-72 (2d Cir. 1956); *United States v. Wall*, 225 F.2d 905 (7th Cir. 1955).

The trial judge limited this evidence very strictly. He cautioned the jury "that the fact that the defendant may have committed another similar act is not of itself any evidence that he is guilty of the offense charged in the indictment." He told the jurors that before they could [fol. 535] consider this testimony they must first find "that the other evidence in the case, standing alone, establishes beyond a reasonable doubt the accused did the particular acts charged in the indictment." Then he limited consideration of the testimony to showing intent, plan or scheme.

If the limitations given to the jury by the trial judge were more strict than he was required by law to make, that is, clearly, not a matter of which the defendant can complain.

IV. Prejudicial Misconduct at the Trial

The defendant complains of prejudice engendered at the trial by the prosecuting attorney. We do not find such

prejudice. It was a very vigorously contested case. Lawyers for both sides "clash'd on their sounding shields the din of war."[10] Each side made charges against the witnesses for the other side. There was a suggestion that the prosecuting attorney injected his personal belief of the defendant's guilt into his argument. There is some talk which would perhaps support this contention. If there is any point to this, it was not timely made and so it does not need to be considered. We, of course, agree that the lawyer's own view as to the probity of witnesses or the soundness of a case is not something to be argued to the trier of the fact. We doubt, too, whether invectives thrown at witnesses for an opponent or at the lawyer for an opponent assist a jury to decide a case. But as we read through the record here we do not think that prejudicial error was committed although each counsel no doubt exasperated the other very much. The trial judge held the contestants in check calmly and his charge was a model of fairness. We think there is nothing to complain of in this department. As Judge Hand pointed out a number of years ago, *DiCarlo v. United States*, 6 F.2d 364, 368 (2d Cir. 1925), the prosecuting attorney may not be shorn "of all oratorical emphasis."

[fol. 536] There is mention in the brief, though not an oral argument, of a complaint based on the circulation of a pamphlet for jurors. As pointed out by the trial judge, this objection was not timely made and need not be considered. There is, likewise, a complaint about the use of subpoenas by the Government. We find this trivial.

The judgment of the district court will be affirmed.

HASTIE, Circuit Judge, dissenting.

One of the principal questions in this case is whether the court below erred in charging the jury as follows:

> "Or if you are satisfied beyond a reasonable doubt that Mr. Rider's concrete was used for constructing a mill which would manufacture articles of steel to be shipped in interstate commerce and if you also believe

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[10] Milton, Paradise Lost, Bk. I, l. 668.

> that the defendant extorted money from Mr. Rider, you are instructed as a matter of law that there has been a substantial effect on interstate commerce shown by the United States. In other words, if you find the facts to be as the Government contends, interstate commerce has been affected, obstructed and delayed."

Stating the issue thus raised this court asks:

> "Is an interference with a man who is furnishing material for a mill which, when completed, will manufacture products which, if successfully marketed, will be shipped out of the state close enough to interstate commerce to be made a federal offense?"

To this question the majority give an affirmative answer. I regret that I am unable to concur.

It is recognized and agreed that the Hobbs Act, 18 U.S.C. § 1951, and the present indictment founded on that statute do not purport to make an extortionate demand upon a business proprietor a federal crime except upon a clear [fol. 537] showing that such interference with the business in question actually "obstructs, delays or affects" interstate commerce or the movement of some article in such commerce. *Cf. United States* v. *Employing Plasterers' Assn.*, 1954, 347 U.S. 186.

In some situations the business against which an extortionate demand has been made can be shown to be a part of or intimately related to interstate commerce so that any disruption of that business necessarily has significant effect upon commerce. Thus, and most obviously, if the business directly affected by an extortionate demand is interstate transportation the wrong is within the Act. *E.g. United States* v. *Kemble*, 3d Cir., 1952, 198 F.2d 889. Again, if extortion is directed against a proprietor engaged in providing, operating or otherwise working upon something so closely related to functioning interstate commerce as to merit characterization as a facility or instrumentality of such commerce, this in itself may be enough to bring extortion hampering that enterprise within the statute. *Cf. Mitchell* v. *Vollmer & Co.*, 1955, 349 U.S. 427; *Oversheet* v.

North Shore Corp., 1943, 318 U.S. 125; *Archer* v. *Brown & Root Inc.*, 5th Cir., 241 F.2d 663.

But here the only commerce said to be affected is the prospective distribution of goods to be produced by a factory about to be constructed. I think it would be an unwarranted extension of the concept of wrongful conduct affecting interstate commerce to embrace this interference with the supplying of building material for a structure which will house an activity which will eventually create some new commerce. In other circumstances it has been thought essential to federal jurisdiction under the commerce clause that the regulated conduct be related to some existing commerce, and not solely to commerce contemplated or planned to have its beginning in the future. This view is exemplified and strongly supported by the cases, of which our own decision in *Kelly* v. *Ford, Bacon & Davis, Inc.*, 1947, 162 F.2d 555, is an often cited leader, refusing [fol. 538] to extend the Fair Labor Standards Act conception of activity affecting the production of goods for commerce to the construction of new plants intended solely for the future production of goods for interstate distribution. The vitality of this concept is attested by *Murphy* v. *Reed*, 1948, 335 U.S. 865, and a comment on that decision in *Mitchell* v. *Vollmer & Co. supra*, at 430 n. 2. It seems to me that the special aversion of the criminal law for speculative conclusions in the chain of proof of guilt makes this limitation even more appropriate, indeed essential, in applying the Hobbs Act.

In addition to this difficulty of affecting commerce not yet begun, the present case presents a second speculative factor. The extortionate threat was made against a local supplier of mixed concrete. It is entirely speculative whether or not preventing this single materialman from furnishing mixed concrete on the construction job he was serving would have affected even future interstate commerce. Was concrete in abundant or short supply? Were there other materialmen ready and anxious to supply without delay the concrete needed for the job? The record tells us nothing. But without some proof that the loss of this supplier would in fact have some delaying effect on the eventual productivity of the mill, any suggested ultimate

effect even on interstate commerce several steps removed is speculative to an extreme degree. *Cf. United States v. Starlite Drive-In, Inc.*, 7th Cir. 1953, 204 F.2d 419. Indeed, I understand the authoritative rule to be that where the conduct in question is an interference with a distinct solely local business, there must be a substantial resultant demonstrable effect, the very antithesis of a speculative effect, upon interstate commerce to justify federal intervention under the commerce power. *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.*, 1948, 334 U.S. 219; *Wickard v. Filburn*, 1942, 317 U.S. 111; *United States v. Wrightwood Dairy Co.*, 1942, 315 U.S. 110. It is true that "[i]f it is [fol. 539] interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze." See *United States v. Women's Sportswear Mfgrs. Assn.*, 1949, 336 U.S. 460, 464. But this figure of speech carries with it the idea that the "squeeze" must be real and the "pinch" uncomfortably perceptible.

On the present record no more can be said than that what was done to an entirely local business might conceivably have future impact on commerce. Most certainly not even a likelihood of actual impact upon interstate commerce can properly be said to have been proved beyond reasonable doubt. Yet that at least was the burden the government undertook to bear in this criminal case.

Finally, it should be considered and kept in mind that the control and punishment of local extortion is primarily the business of local or state government. The Hobbs Act is an auxiliary and partially duplicating federal superimposition on state law enforcement. In the view of Congress this is a desirable measure of federal assistance to the states in the exercise of their police power. But where state power and responsibility are thus primary and the national government is merely performing an auxiliary function, we should not be eager to stretch federal jurisdiction to cover doubtful cases offering only a tenuous or speculative theory of federal jurisdiction. See *Schwartz, Federal Criminal Jurisdiction and Prosecutors' Discretion*, 1948, 13 Law and Contemporary Problems, 64, 70. We should insist that federal jurisdiction be clear before imposing federal sanctions in an area of primarily local con-

cern. Federal jurisdiction is certainly far from clear in the circumstances we are now considering.

What has been said in this dissenting opinion concerns only one of the two bases upon which the jury could have found the essential effect upon interstate commerce under the court's charge. We cannot know upon which theory the jury proceeded in finding the accused guilty. Therefore, I [fol. 540] would send this case back to the district court for a new trial at which the erroneous theory of involvement of interstate commerce would be eliminated.

[fol. 541]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,543

UNITED STATES OF AMERICA,

vs.

NICHOLAS A. STIRONE, Appellant.

On Appeal From the United States District Court for the Western District of Pennsylvania

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Present: Goodrich, Staley and Hastie, Circuit Judges.

JUDGMENT—December 9, 1958

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed.

December 9, 1958

[File endorsement omitted]

[fol. 542] [File endorsement omitted]

[fol. 543]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

[Title omitted]

MOTION FOR EXTENSION UNTIL JANUARY 9, 1959 OF TIME WITHIN WHICH PETITION FOR REHEARING MAY BE FILED —Filed December 12, 1958

This 12th day of December, 1958 appellant, by his counsel, Michael von Moschzisker, Esq., asks the Court to extend until January 9, 1959 the time within which he may file a Petition for Rehearing in the above case, and assigns in support of his request the following:

1. The Opinion and Order of the Court were filed December 9, 1958. Circuit Judge Goodrich wrote the Opinion for himself and Circuit Judge Staley. Circuit Judge Hastie wrote a dissenting Opinion.

2. In the opinion of counsel for appellant, Judge Goodrich's Opinion shows that counsel did not succeed in communicating to the Court a proper understanding of appellant's complaint with regard to various rulings by the trial judge.

3. The questions of law involved included Constitutional problems which counsel believe it is their duty to place before the Court in a short brief expressing appellant's position differently than it was expressed at the time of oral argument and in the brief filed before oral argument.

[fol. 544] 4. Counsel is engaged in the preparation of other briefs in appellate courts, the deadlines for which are approaching.

5. Counsel certifies that he has this day mailed one copy of this petition to Hubert I. Teitelbaum, United States Attorney, Pittsburgh, Pennsylvania.

Michael von Moschzisker, Attorney for Appellant.

[fol. 545]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,543

[Title omitted]

Present: Goodrich, Staley and Hastie, Circuit Judges.

ORDER EXTENDING TIME TO FILE PETITION FOR REHEARING—December 15, 1958.

Upon consideration of the motion by appellant,

It is Ordered that the time for filing a petition for rehearing in the above-entitled case be, and it is hereby extended to January 9, 1959.

By the Court, Goodrich, Circuit Judge.

December 15, 1958

[File endorsement omitted]

[fol. 546]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,543

[Title omitted]

[File endorsement omitted]

[fol. 547]

PETITION FOR REHEARING—Filed January 5, 1959

On December 9, 1958 this Court (per Circuit Judges Goodrich and Staley in an Opinion by the former) entered judgment in this case, affirming the judgment below. Circuit Judge Hastie dissented. Appellant requests the Court to grant him a rehearing for the reasons set forth herein.[1]

[1] This Court extended to January 9, 1959 the time within which this petition might be filed.

[fol. 548]

Reasons for Granting Rehearing

1. The Fatal Variance

This was a prosecution under the Hobbs Act, 18 U. S. C. A. 1951.

Sand had been brought from other states to Pennsylvania where it was used to make concrete for a Pennsylvania steel mill which would manufacture articles of steel to be sent out into interstate commerce. As the Opinion of the Court concedes at page 4, the indictment charged interference with interstate commerce on the receiving end of the sand rather than interference with the sending of the steel products from the steel mill into interstate commerce.

However, the trial judge instructed the jury that the necessary interference with interstate commerce could be found *either* on the basis of interference with receipt of the sand or on the basis of interference with the eventual sending out of steel products (287a, 288a.)[2]

Appellant's 55-page brief in this Court (page 15) devoted only one short paragraph to the argument that an indictment for obstructing the receipt of sand in interstate commerce could not support a conviction for having obstructed the sending of steel products into interstate commerce.

In the Opinion of this Court affirming the judgment, Judge Goodrich dismisses this problem by saying that if there was a variance, it was harmless (page 4).

The difficulty may be that Judge Goodrich thought of this as a trial for extortion from an employer engaged in an industry affecting interstate commerce. But that is not [fol. 549] what the Hobbs Act prohibits. The Hobbs Act prohibits the obstruction of interstate commerce by means of extortion. The obstruction of commerce is the very

[2] This was excepted to at 300a. The Opinion of the Court says evidence of obstruction at the sending end was not objected to on the grounds raised herein. But an objection on the ground of immateriality was made (51a-53a.) We submit that a failure to object to immaterial evidence would not waive the right to have the case properly submitted to the jury anyway.

essence of the offense. We say that the obstruction which was charged had to be proved. On the other hand, if the essence of the offense had been extortion from an employer engaged in an industry affecting interstate commerce, a variance as to the way in which the industry affected commerce might well not be a fatal variance.

The dissenting Opinion of Judge Hastie does not discuss the problem. He dissented on the ground that there had not been a clear showing that the actual sending out of any steel products into interstate commerce had been interfered with and, therefore, there had not been sufficient evidence to take the case to the jury on a theory of such interference.

As a matter of fact, the issue is more grave than that. A Constitutional question is involved, as we shall demonstrate below.

Counsel has not previously succeeded in communicating the true nature of this question to this Court, and it is apparent from the Opinion of the Court that the Court itself has not yet passed on the question after considering it in its proper light.

The Hobbs Act provides (18 U. S. C. A. 1951):

> "Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both."

[fol. 550] Obviously the essence of the offense is obstruction of interstate commerce by extortion.[3]

Since the Fifth Amendment provides that you can only be tried for an infamous crime after having been indicted

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[3] Cf. Taft-Hartley Act 29 U.S.C.A. 186(b). The essence of the offense proscribed by the Taft-Hartley Act is receiving money from an employer in an industry affecting commerce. Obstruction of commerce is not required by the Taft-Hartley Act. It is required under the Hobbs Act.

for it, and that there must be due process, which includes notice of the charge, defendant could not constitutionally be tried for any obstruction of interstate commerce other than that charged in the indictment. *DeJonge* v. *Oregon*, 299 U. S. 353, 362, 57 S. Ct. 255. See *Cole* v. *Arkansas*, 333 U. S. 196, 201, 68 S. Ct. 514.

In the present case, as the Opinion of this Court concedes at page 4, the only obstruction of interstate commerce charged by the indictment was obstruction of sand at the receiving end.

It appears to us that it was unconstitutional to submit to the jury an alternative basis for conviction on the theory that instead of obstructing the receiving of sand which had come in interstate commerce, defendant had obstructed the sending out into interstate commerce of steel products manufactured in a mill constructed out of concrete into which the sand had gone.

Neither "obstruction" includes the other and the two were vastly different.

The Opinion of this Court at page 4 dismisses the problem as having involved a mere "variance," and says the variance was harmless.

Of course, every time a man is indicted for one offense and convicted of an offense somewhat different, there has been a "variance." Some variances are unconstitutional. Others are not even unlawful. The question in the present case is which kind of a variance this was rather than whether it was a mere variance.

[fol. 551] The Supreme Court laid down the law in *Berger* v. *U. S.*, 295 U. S. 78, 82, 55 S. Ct. 629 as follows:

> "The true inquiry, therefore, is not whether there has been a variance in proof, but whether there has been such a variance as to 'affect the substantial rights' of the accused. The general rule that allegations and proof must correspond is based upon the obvious requirements (1) that the accused shall be definitely informed as to the charges against him, so that he may be enabled to present his defense and not be taken by surprise by the evidence offered at the trial; and (2) that he may be protected against another prosecution for the same offense."

If either of the two requirements of the Berger case have not been met, conviction in the present case cannot stand.

First, we inquire whether the variance was such as to deprive defendant of his protection against another prosecution for the offense of having obstructed the sending out of the steel products into interstate commerce. It certainly would not. As this Court said at page 130 of *U. S.* v. *Kenny*, 236 F. 2d 128:

> "Where the state charges an accused with two related offenses, an acquittal of one precludes subsequent prosecution on the other, if that acquittal was the result of decision in favor of the defendant on an issue which would be essential to the case against him on the second charge."

If Stirone had been acquitted, it would have been impossible to say whether or not the acquittal resulted from a decision in his favor on the issue of whether he obstructed the shipment of the steel products.[4] The verdict would [fol. 552] have been not guilty as charged. That kind of obstruction was not charged in the indictment.

Second, we say that the other requirement of the Berger case has not been met, i.e. the requirement that the accused be definitely informed as to the charges against him, so that he may present his defense and not be taken by surprise.

Where a name is misspelled in an indictment, or where an incorrect dollar amount is cited for the value of stolen property, a variance between allegata and probata does not mean the defendant has not been sufficiently informed as to the charges against him. But the present case is different. In the present case, defendant was charged with

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[4] On the other hand, it cannot be said that Stirone's conviction was based on an obstruction of the shipment of steel products.

It may have been based on the alternative theory of the obstruction of receipt of sand. Since the two offenses involved different factual elements, the conviction of one offense would not bar trial for the other offense. The cases so holding are legion. One is *U. S.* v. *One Dodge Sedan*, 113 F. 2d 552.

obstructing the receipt of sand in interstate commerce and was convicted of obstructing the shipment of steel products in interstate commerce. This was not a case where the obstruction was proved to have been done in a slightly different way from that charged. Here an altogether different obstruction was shown.

The Opinion of this Court says at page 4 that the record discloses that counsel was prepared for the introduction of the testimony that the shipment of steel had been obstructed, rather than surprised by it. We know of no such portion of the record and we note that no defense was made to the charge that the flow of steel products into interstate commerce had been dammed up.

Accordingly, both tests laid down in the Berger Case must be resolved in Stirone's favor and the conviction should not be permitted to stand.

2. The Proof of Other Offenses

As pages 21-23 of the Brief for Appellant in this Court explain, the trial judge over-ruled defendant's repeated objections to the reception of evidence that on two occasions in 1952 defendant had unlawfully received payments from other contractors.

[fol. 553] The shake down alleged in the indictment on which defendant was tried is supposed to have taken place in September, 1951.[5]

The trial judge permitted the evidence of other offenses to be received on the theories that it demonstrated (a) intent, and (b) plan, scheme or design.

The evidence could not show intent. Rider, the alleged victim of the alleged shake down charged in the indictment, testified to a particular conversation at a particular time and place in which defendant said things to him which were in no way ambiguous and clearly constituted attempted extortion if the jury found that the conversation took place.

Defendant met this evidence with a blanket denial of any such conversation ever having taken place, although

[5] At line 5 of page 21 of Brief for Appellant "1955" should of course read "1951".

he admitted having received lawful commissions from Rider.

The question for the jury was whether the conversation which Rider had testified to had taken place at all. If it took place, there was no question as to what defendant's intent was. Accordingly, there was no occasion in this case to receive evidence of other offenses, allegedly committed in 1952, for the purpose of showing what defendant's intent had been in September, 1951.

Nor was the evidence of the other offenses properly received on the theory that the other offenses constituted part of a plan, scheme or design to extort money from Rider. The other offenses had no connection with Rider, with Rider's business, or with any contract or transaction involving Rider. Furthermore, they were alleged to have taken place subsequent to the alleged conversation in which Rider was supposed to have been shaken down. For both of these reasons, the other offenses just could not possibly have [fol. 554] constituted part of a plan, scheme or design to extort money from Rider.

Thus the evidence of other offenses did not serve the purpose of showing either (a) intent, or (b) plan, scheme or design.

However, the Opinion of this Court at pages 8 and 9 holds that the evidence was properly received in order to show "intent, plan or scheme."

The Opinion reached this conclusion by a process of some confusion.

At page 8 the Opinion says:

> "But the question before the jury was whether Rider's story was to be believed or not, the defendant having vehemently denied it. The evidence in question was, therefore, relevant to explain Stirone's purpose or intent in soliciting money from Rider."

To this we answer that if the conversation which Rider related took place, defendant's intent to extort money was clear. The evidence of other offenses could not make it any more clear. The Opinion of the Court is wrong in saying that because defendant denied Rider's story, evi-

dence of other offenses was received in order to show what defendant's intent had been if his denial was untrue.

The Court cites two cases at page 8. Neither of those cases have much to do with the problem. *U. S.* v. *Blount*, 229 F. 2d 669, 671, 672 is a case in which after having committed the shake down alleged in the indictment, the defendant later attempted to shake down the same victim again and used the telephone to do so. In the telephone conversation, the defendant admitted the earlier blackmail or extortion. Of course, evidence of this conversation was receivable as an admission of guilt of the offense charged in the indictment. In *U. S.* v. *Wall*, 225 F. 2d 905, there [fol. 555] was evidence that defendant was charged with having received money for obtaining the promotion of a postal employee. There was evidence that he had told the postal employee that $400 was usually asked and $400 was the usual amount. Evidence was then permitted to come in to the effect that on earlier occasions another employee had obtained a promotion by paying defendant $400, but still another employee had failed to obtain one after paying defendant only $300. The fact that the other earlier offenses in the Wall case corroborated the testimony as to the offense charged in the indictment in that case is obvious. The evidence fully supported the testimony that Wall had said $400 was the usual amount. There is no such background in the present case.

It is almost unbelievable that the evidence of other offenses in the present case was received on the theory that it proved scheme, plan or design (Opinion page 6) although the trial judge cautioned the jury (Opinion page 8) "that the fact that the defendant may have committed another similar act is not of itself any evidence that he is guilty of the offense charged in the indictment."

But if the evidence showed a plan, scheme or design to extort money from Rider, it was in "itself" some "evidence that he is guilty of the offense charged in the indictment."

Confusion can be resolved only by a new trial or judgment of acquittal.

3. Interstate Commerce

The testimony is that Rider acceded to appellant's demands on the day in question at which time Rider was receiving sand by railroad car intrastate, and therefore the crime being complete, there was no effect upon interstate commerce because there was no such commerce. [fol. 556] Appellant says that the fact of Rider unloading sand from river barge at the time the payments were made is immaterial.

Appellant submits that the Court was in error in citing with approval and as in point, the case of *Nick* v. *U. S.*, 122 F. 2d 660 (8 Cir. 1941) because that case is distinguishable from and not authority for the instant case. In the Nick case, the film was always in interstate commerce. It was part of a giant system whereby the film started its interstate journey from Hollywood, California and ended back in California, and at the time it was in the hands of any of the movie theaters for exhibition purposes, it was nonetheless in interstate commerce, and was part and parcel of a continuous interstate movement. Such are not the facts in this case.

In the other Eighth Circuit case cited by the Court *Hulahan* v. *U. S.*, 214 F. 2d 441 (8th Circuit 1954) as being in point, the facts there as to Counts 1 and 2 taken from the appellant's record are as follows:

> "Materials and supplies for the development were purchased from outside the State of Missouri, fir lumber coming from Washington and Oregon, shipment of which was handled on schedule through Robert Long Lumber Company of East St. Louis, Illinois. The lumber was shipped from Washington and Oregon in carload lots to Bissel Station, which adjoined the project, and brought by truck to the project. Schedules were set up for the delivery of the lumber, the schedule calling for approximately a carload of lumber each week, but the schedule was subject to the control of the witness, so it could be delayed or speeded up. Yellow pine lumber was purchased from several southern states: Arkansas, Louisiana, Texas and Tennessee. Bathtubs were shipped from Alliance, Ohio; garbage

disposals from Los Angeles, California; screens from [fol. 557] Saginaw, Michigan; sheathing from Minneapolis, Minnesota; and plasterboard from Buffalo, New York."

The crucial interstate commerce element of the case was that the delivery schedule was under the control of the victim, and he could delay or accelerate. The victim was from California, and his whole business was interstate in nature. Hulahan is distinguishable from this case because Rider's business was purely local. Hulahan's business was interstate by its very nature. Hulahan's project was local but his business interstate. The Hulahan case is some authority for the proposition that any interstate commerce which might be affected is that which is involved as of the date when the demand is made.

The Court's theory in this case is that Rider's local activities were illegally involved simply because they concerned the sand which had previously moved in interstate commerce. This theory is at variance with that set forth in *U. S.* v. *Starlite Drive-In*, 204 F. 2d 419.

Appellant submits that the Court misinterpreted Rider's activities in this case. The evidence fully disclosed that Rider was a manufacturer of ready-mixed concrete. This was his business. He was not an importer of sand but only received the sand locally from a local corporation for use as one of the ingredients of his mixture for concrete.

We submit that Judge Hastie's Opinion as to the plant theory is equally applicable to the sand theory, and that there must be some direct drive, thrust or pinch directed at the interstate commerce. We submit that it is the effect upon interstate commerce that is the criterion of Congressional power. *U. S.* v. *Wrightwood Dairy Co.*, 315 U. S. 110, 62 S. Ct. Reporter 523. We submit that the Court regardless of Rider's business and activities applied Congressional power over interstate commerce far beyond the Constitutional limits; and that the Court's decision is at variance with the decisions of the United States Supreme [fol. 558] Court interpreting the commerce clause. The effect of the Court's opinion is far reaching, and beyond that which the framers of the Constitution ever intended.

The practical effect of this present decision would be that if the manager or cashier of a Food Fair Supermarket paid money under extortion or robbery, as defined, that this would be a violation of the Hobbs Act and a Federal offense even though purely local in nature, and only because certain food, articles or commodities were in the course of the Food Fair local business received from out of the state, and unloaded by the store. The effect of this decision is virtually to destroy any distinction between state and national jurisdiction because in our modern business almost every article we deal with has at sometime or another been in interstate commerce; and this is not the purpose of the commerce clause, as defined and limited by the Supreme Court of the United States.

We submit that since a criminal statute is involved that the Act must be construed strictly, and that therefore it is required that any extortion must affect interstate commerce; and that this affectation must be directly to the commerce and not upon some subsidiary or incidental local business.

4. Reasonable Fear

Your Honorable Court did not pass upon the important question of the reasonableness of the fear. Not only must there be fear but such fear must be reasonable. There was no showing of such fear in the case at bar. See *U. S.* v. *Green*, 246 F. 2d 155 at 159. Any fear of economic loss was not reasonable under the circumstances.

The majority Opinion discusses two theories of guilt under the guise of phase. The Court, however, does not pass upon the proposition that it was error for the Government to try the appellant upon some other theory of guilt [fol. 559] other than the one charged in the Indictment; and the Opinion of the Court did not pass upon appellant's argument that he had been denied due process of law because of the change of theory, and did not discuss, overrule or distinguish the case of *U. S.* v. *Kram*, 247 F. 2d 830 (3rd Circuit.)

The appellant contends that in order to sustain this conviction, the proof must show that the extortion affected interstate commerce. There was no proof on this subject

whatsoever. The Court charged the jury that commerce was affected as a matter of law. This we urge was error because the alleged extortion was not directed at interstate commerce itself but was directed at the loss of a contract, and any burden upon the victim by loss of said contract was not something the natural effect of which was to affect interstate commerce coming or going. In other words, the Government failed to prove a natural effect on interstate commerce.

[fol. 560] CONCLUSION

For the reasons set forth herein, we respectfully submit that this petition for a rehearing should be granted.

Michael von Moschzisker, Vincent M. Casey, V. J. Rich, Margiotti and Casey, Attorneys for Appellant.

CERTIFICATE OF COUNSEL

We hereby certify that this petition for a rehearing is presented in good faith and not for delay.

Michael von Moschzisker, Vincent M. Casey, V. J. Rich.

[fol. 561] [File endorsement omitted]

[fol. 562]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,543

[Title omitted]

ANSWER TO APPELLANT'S PETITION FOR REHEARING—
Filed January 14, 1959

The United States of America answers the petition of appellant, and respectfully represents to this Court that the Petition for Rehearing should be denied because the

reasons for granting the rehearing set forth in appellant's petition are the same and identical reasons as set forth in appellant's brief on appeal, and argued orally before the Court.

Hubert I. Teitelbaum, United States Attorney.
Thomas J. Shannon, Assistant United States Attorney.

[fol. 563] Certificate of service (omitted in printing).

[fol. 564]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,543

UNITED STATES OF AMERICA,

v.

NICHOLAS A. STIRONE, Appellant.

On Petition for Rehearing

Before: Biggs, Chief Judge, and Goodrich, McLaughlin, Staley and Hastie, Circuit Judges.

OPINION OF THE COURT—Filed January 27, 1959

PER CURIAM.

A petition for rehearing is presented for our consideration. The grounds urged therein have been fully argued to this court. We find no merit therein that would warrant a rehearing. Accordingly it will be denied.

BIGGS, Chief Judge, dissenting.

A fatal variance appears between the charge of the indictment and the proof. This court held correctly that the indictment charged Stirone with obstructing the receipt of [fol. 565] sand at Rider's plant but concluded that it was not error for the trial court to have charged that the interference with interstate commerce prohibited by the Hobbs Act, 18 U.S.C., Section 1951, could be found either on the basis of interference with the receipt of the sand or on the ground of obstruction with the shipping of steel from the Allenport plant of the Pittsburgh Steel Company which was in course of construction. Stirone was therefore tried on two charges. One, obstruction of the receipt of sand, and two, interference with delivery of steel from a plant not yet built. The first charge was laid in the indictment. The second was not. The doctrine of Berger v. United States, 295 U.S. 78, 81 (1935) cannot cure the error. It is clear in Berger that the crime for which Berger was convicted was within the words of the indictment, see 295 U.S. at pp. 81-83: the objection here is that the allegations of the indictment do not charge the crime for which Stirone was convicted.

I am also in accord with the views expressed in Judge Hastie's dissenting opinion. The statute is extended unreasonably to embrace interference with prospective distribution of steel from a factory in course of construction. The Allenport plant of the Pittsburgh Steel Company is not and was not a facility in interstate commerce. Cf. Mitchell v. Vollmer & Co., 349 U.S. 427 (1955); Archer v. Brown & Root, Inc., 241 F.2d 663, 669 (5 Cir. 1957).

Stirone preserved his rights by appropriate objections.

I therefore must respectfully dissent from the order of this court denying rehearing.

Judge Hastie shares these views and joins in this dissent.

[fol. 566]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,543

[Title omitted]

Present: Biggs, Chief Judge, and Goodrich, McLaughlin, Staley, and Hastie, Circuit Judges.

ORDER DENYING PETITION FOR REHEARING—
January 27, 1959

After due consideration the petition for rehearing in the above-entitled case is hereby denied.

By the Court, Goodrich, Circuit Judge.

Dated: January 27, 1959

[File endorsement omitted]

[fol. 567]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,543

[Title omitted]

ORDER STAYING ISSUANCE OF MANDATE—January 31, 1959

Pursuant to Rule 36 (2) of this Court, it is Ordered that issuance of the mandate in the above cause be, and it is hereby stayed until March 4, 1959.

Goodrich, Circuit Judge.

[File endorsement omitted]

[fol. 568] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 569]

SUPREME COURT OF THE UNITED STATES

No. 722, October Term, 1958

NICHOLAS A. STIRONE, Petitioner,

vs.

UNITED STATES.

ORDER ALLOWING CERTIORARI—April 27, 1959

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. The case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

VOLUME II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1959

No. [redacted] 35

NICHOLAS A. STIRONE, PETITIONER,

vs.

UNITED STATES OF AMERICA.

[redacted] OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 24, 1959
CERTIORARI GRANTED APRIL 27, 1959

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INTRODUCTION BY COUNSEL FOR APPELLANT

While working on Appellant's Brief, counsel for appellant found that a proper presentation of appellant's case required reference in the brief to some portions of the transcript of testimony which had not been printed in appellant's Appendix.

Accordingly Volume II of appellant's appendix has been printed and is submitted herewith for the sole purpose of placing such portions of the trial transcript before this Court in proper form.

One unfortunate result of this is that the contents of Volume II of appellant's Appendix are not arranged chronologically in relation to the contents of Volume I. Counsel has tried to remedy this by italicized remarks enclosed in brackets at the head of each separate part of Volume II.

[*Chronologically this should come immediately after the last answer at 36a.*]

Q. How long have you been connected with the Hod Carriers?

A. Oh, over a half century.

Q. Over 50 years.

MR. CASEY: If the Court please, I would ask counsel for the Government to make an offer at Side Bar as to the purpose of this witness.

AT SIDE BAR

MR. TEITELBAUM: I am going to show by this witness this man's position in the labor organization, what his position is, the status of the movement, what the Laborers' District Council is, what they do, to show Mr. Stirone's local labor position.

MR. CASEY: Subject to cross examination as to the qualifications as far as the local district is concerned.

THE COURT: Oh, certainly.

MR. TEITELBAUM: He said he was International president.

MR. CASEY: Anything about that, with the International, I have no objection.

IN OPEN COURT

Q. How long have you been the president?

A. Since 1926.

Q. You were International president since 1926?

A. Yes, sir.

Q. When you took over in 1926, it was a rather small union, wasn't it?

A. Pretty small.

Q. Was there any chapter here in Pittsburgh or any local here in Pittsburgh?

A. Yes, sir.

Q. What local was here?

A. Oh, there's Local 11, 226, not only McKeesport.

Q. Was 1058 here?

A. No, sir. 1058 is a heavy construction organization which was organized in the latter years since the N.R.A.

Q. Much of the organization was built and the membership was increased under your tutelage, is that right?

MR. CASEY: That is objected to as leading.

THE COURT: It is leading, Mr. Teitelbaum.

MR. TEITELBAUM: All right.

Q. Who was the leader of the Hod Carriers during the period from 1926 when it was a small union until today?

A. Well, it was with the cooperation of my assistants and the local.

Q. And who was the leader?

A. Well, I was the chairman.

Q. You were the chairman. Was your office always in Washington?

A. No, sir.

Q. Where was it before that?

A. In Quincy, Massachusetts. We moved to Washington in '40.

Q. Then it was in Chicago too for a while or what?

A. No, our office was never in Chicago.

Q. How long have you known the defendant, Nicholas Stirone?

A. About 30 years.

Q. You are his superior, aren't you?

A. Well, I am a chairman, the director.

Q. So you are the man in the national line above him, is that right? Or are you?

MR. CASEY: That is objected to as leading.

THE COURT: It is leading, Mr. Teitelbaum.

Q. Who is Mr. Stirone's superior in the Hod Carriers' Union?

A. Well, I am the chairman of the General Executive Board and I carry out the instruction of that Board.

BY THE COURT:

Q. That still doesn't answer the question. Are you his superior or aren't you?

A. Just now, he is just a member and an officer of the local. He is not connected with the International so at present I am not.

BY MR. TEITELBAUM:

Q. Was he ever anything beside that?

A. Yes, he's been our general representative.

Q. Where was he your general representative?

A. From '28 to '44.

Q. In 1928, where was your general representative?

A. District of Jersey, New York.

Q. He was your representative there?

A. He was a consultant conciliator for the International.

Q. What was his title in the International?

A. Consultant and conciliator.

Q. Consultant-conciliator. When did he leave New Jersey?

MR. CASEY: That is objected to as immaterial.

THE COURT: Objection overruled.

A. I'd say around '35 or '36, I'd say about that.

Q. Where did he go?

A. He came to Pittsburgh.

Q. Now, he had been with you abroad, had he not? Had he been?

A. Oh, it was a delegation selected to go to the English Congress and he was one of them.

Q. How many delegates were there?

A. I don't know. There's seven or eight.

Q. Were you one of them?

A. Yes, sir.

Q. Was Nicholas Stirone one of them?

A. Well, he was just a co-delegate.

Q. A co-delegate?

A. He was not the directly appointed delegate.

Q. Who was the directly appointed delegate?

A. I was selected by the American Federation of Labor.

Q. Who selected Mr. Stirone?

A. It's just by consent of all of us, the Board.

Q. Who selected him?

A. It was just a consent selected by the Board and the Administration.

Q. The Board of what?

A. General Executive Board.

MR. CASEY: I object to the line of questioning as being immaterial and irrelevant.

THE COURT: I have already overruled the objection, Mr. Casey.

Q. In other words, the Board of Governors of the Hod Carriers or of the A.F. of L?

A. Of our own, my International.

Q. Your International elected him?

A. They did not elect him. It was understood by ourselves. We wanted a co-delegate.

Q. So he went with you on that convention?

A. Yes.

Q. Then when he came back, he moved to Pittsburgh?

A. No, that was in '31.

Q. That was in '31.

A. He came to Pittsburgh about four, five years later.

Q. Who ordered him transferred from Jersey to Pittsburgh?

A. We transferred him.

Q. "We" is who?

A. The International.

Q. The International decided that?

A. Yes, sir.

Q. When you say that, are you talking about you or you and your Board?

A. The International as a whole. The Administration.

Q. What was his job to be in Pittsburgh?

A. To organize the heavy construction workers because it was unorganized and the highways and streets.

Q. And what was his title when he came to Pittsburgh?

A. Consultant-conciliator.

Q. As consultant-conciliator, that means his job was to organize the local union?

A. Organize the industry or local unions, form if there isn't any.

Q. Under whose instructions was he then?

A. The General Office.

Q. Who supervised his work?

A. I did.

Q. You sent him here to Pittsburgh to organize?

A. Yes, sir.

Q. How big an area did you give him to organize?

A. Well, it's one of the things when you get in here, you are generally according to the contractual set-up and

the limited district of the contractors, that's how the area works out itself.

Q. What was his area?

A. It was trying to organize the heavy construction in Pittsburgh. I understood it extended to 33 counties now.

Q. When you first sent him in here, did it extend to 33 counties?

A. No, it was just for Allegheny County and it gradually spread out.

Q. Did you send him up to Johnstown to take over a local union up there?

A. There was a dispute there long before he went over there to help to correct it. He didn't take anybody over.

Q. You knew Mr. Russell, didn't you?

A. I met him once or twice.

Q. Mr. Russell was what?

A. I think he was the business agent in Youngstown, Local 508.

Q. Did you ever know Mr. Russell as one of the men in Johnstown?

A. I think that's where he comes from.

MR. CASEY: I object to this line of questioning as not being within the province of the offer as made by the United States District Attorney at Side bar.

MR. TEITELBAUM: I am trying to show the scope of his activities which is exactly what I offered at Side Bar.

MR. CASEY: I'll have to have my memory refreshed on that. I might be wrong.

THE COURT: Objection is overruled.

Q. When you said Youngstown, did you mean Johnstown?

A. That's what I meant, Johnstown.

Q. Did you give instructions to Mr. Stirone to go up there and take over the union in Johnstown?

A. No, sir, I just sent him there to help to straighten out their internal affairs.

Q. Did he have authority to take over the union up there?

A. No, sir.

Q. Did he have authority to remove Mr. Russell from office?

A. No, sir.

Q. Who would have that kind of authority?

A. It has to come from the general office.

Q. Did you do it?

A. I don't remember the case just exactly.

Q. You don't remember whether you did it or not. Did you ever give Mr. Stirone authority over the whole area?

A. No, sir.

Q. Did you order a District Council to be organized?

A. The District Council had been existing long before Stirone came here.

Q. What is the District Council, Mr. Moreschi?

A. The District Council of Hod Carriers?

Q. Yes.

A. Hod Carriers, Building and Common Laborers' Union of America.

Q. What do they do?

A. They unify the locals and work together to protect the interests of the local, enter collective bargaining in a wider scope of area to bring better understanding between our men and the employers.

Q. Does the District Council do the wage negotiations or does the local do it?

A. There's different areas the Council does and other areas sub-groups of the Council bargains in their own territory.

(Constitution of International Hod Carriers, Building, and Common Laborers Union of America marked Government's Exhibit No. 6.)

Q. I show you now what has been marked as Government's Exhibit No. 6 and ask you if you recognize what that is?

A. It's the Constitution of the International Hod Carriers, Building and Common Laborers' Union of America, not the latest revised.

Q. No, no, that's a '51 copy?

A. That's right.

Q. Does this Constitution under Article 13 set forth the way the District Councils are set up and what they are for?

A. Yes, sir.

Q. That's in that Constitution, the way it's set up, isn't it?

A. Yes, sir.

Q. I read from Section 7.

MR. CASEY: Just a minute, please.

MR. TEITELBAUM: I want to read it to him and ask him if this is the way it's done in this district. Do you have any objection?

MR. CASEY: No, you ask him that first. I have no objection if he knows.

Q. "The District Council shall have jurisdiction, supervision and control over all matters relating to agreements with employers for work within its territorial jurisdiction but not over the National, Regional or Area agreements (which are within the jurisdiction of the General President and General Secretary-Treasurer) and of all things incidental to such agreements, i.e., wages, hours and working conditions." Is that what the District Council here in Pittsburgh has always done?

MR. CASEY: If the Court please—

A. I can't answer that exactly.

MR. CASEY: Objected to as leading.

A. As I noted this morning, this employer said he only bargains for eleven counties out of 33 while another employer said he bargains for the whole 33. That's the custom.

Q. Mr. Moreschi, we are only talking about the District Council of Hod Carriers?

A. I am talking about the same thing.

Q. Are they the same ones that Mr. Tejan, the first witness, was talking about?

A. Yes, sir.

Q. The 33 counties?

A. Yes.

Q. Let me ask you this—

A. These contractors have limited jurisdiction in the territory; from their own organization they have to deal within that limited area.

Q. I mean, I don't want to get into whether you are mistaken on that or not. I am not trying to do anything like that.

MR. CASEY: Do you think he is mistaken on that?

MR. TEITELBAUM: The man obviously, if the Court will—I am sure everybody will recall that Mr. Tejan said he dealt with a separate council and not with the Laborers' District Council. He dealt with the Heavy Engineering Council. I carefully asked him if those two were the same and he said no.

Q. Now, the District Council, is its general responsibilities, as I read to you out of your Constitution?

A. As I stated, yes, sir.

Q. That's what they are supposed to do, is that right?

A. There is limited jurisdiction of territorial contracts that would have to follow that rule.

Q. Within the limits of the 11 counties here, is this what they do?

A. In the 11 counties, yes, sir.

Q. And Mr. Stirone is—what title does he have?

A. He is the president of the Council.

Q. He is the president of the Local Council?

A. Yes, sir.

Q. Has been ever since it was organized?

A. I couldn't say that. No, not since it's organized.

Q. Has he been head of it ever since he came to Pittsburgh?

A. I couldn't answer that.

Q. You don't know?

A. I'd have to check the records.

Q. About a six-month period he wasn't in the union, is that right?

A. Sir?

Q. About a six-month period back in '44 he wasn't in the union at all, is that right?

A. He was in the union.

Q. Was he active? Did he have offices?

A. I guess he was active in his organization.

Q. Did he hold any offices under you during that time, during that six months?

A. Not since June of '44. He didn't hold no appointments. He never held no offices in the International.

Q. Since June of '44, has he held no appointment under you?

A. That's right.

Q. Up to that time?

A. From '44 to '49. Then he had a temporary appointment from '49 to '53 and then he had no more since.

Q. From '49 to '53 he had a temporary appointment?

A. He had assignments.

Q. What was that assignment?

A. Whenever we needed somebody to look after certain things.

Q. What sort of certain things?

A. Helping the organization, the internal affairs or help negotiate agreements or settle jurisdiction with trades or otherwise.

Q. On an international basis or locally or what?

A. In the territory assigned.

Q. What was that?

A. Whatever may be the occasion.

Q. Did you assign him out of the Pittsburgh territory to troubleshoot for you, is that what you mean?

A. Oh yes, he was assigned to Carolina and a lot of other places.

Q. What did he do when he went down to Carolina and other places?

A. Tried to lend us assistance, cooperation, to straighten out, assist the organization in the best way to promote our interests.

Q. You would send him to various places around the country for that purpose?

A. Well, he hasn't been in too many since '44 but he has been.

Q. Did he get a salary for doing that from the International?

A. Yes, sir, he gets a day per diem.

Q. Not a per diem. I asked you if he gets a salary?

A. Oh, a salary and expenses.

Q. Was he paid on a daily basis or was he paid on a yearly basis?

A. Sometime they pay on daily, sometimes paid on a weekly or sometimes they are paid on—his occasion of the assignment was limited to two weeks a month.

Q. Two weeks out of the month he worked for you, is that right?

A. In spare time in between the month.

Q. You directed him then?

A. He was under the directors of our office.

Q. Of course, you knew what he was doing then, right?

A. I think so.

Q. You think so?

MR. CASEY: You think so?

MR. TEITELBAUM: He said he thinks so.

MR. CASEY: What did you say then?

MR. TEITELBAUM: I said, you knew what he was doing then.

MR. CASEY: Well, I can't hear you, sir. I am sorry.

MR. TEITELBAUM: I am trying to speak pretty loudly.

MR. CASEY: I hear you well now.

MR. TEITELBAUM: O.K.

Q. Mr. Moreschi, do you as an International, determine the conditions when strikes should be called or is that done locally?

A. That's mostly a local question. The International never had a strike since its inception nationally.

Q. So if there is a labor dispute, it's decided at the local level?

A. Right, at the local level.

Q. Does the president of the Laborers' District Council have any supervision of the unions under him, the locals under him?

A. Not—only limited to what the Constitution provides.

Q. Within the limits of the Constitution?

A. Yes, sir.

Q. What control does he have over the local unions?

A. Setting up, bringing, unifying the strength of the organization, helping him in any way to help the locals.

Q. Can he call off a strike?

A. Well, whatever the District Council rules on it.

Q. Oh, can the District Council call off a strike?

A. Some agreements are covered by a District Council. They may have that authority but the power of the locals.

Q. And if you—

MR. CASEY: If the Court please, it is apparent—

A. If the locals, some of their rights or gifts, powers of the Council, the Council may call a strike.

MR. CASEY: If the Court please, it is apparent only one Council is involved in this indictment, in only one vicinity, no matter how many counties are involved. I object to any questions outside of this particular district.

MR. TEITELBAUM: Outside of this district?

MR. CASEY: The particular district.

MR. TEITELBAUM: All right. My questions are directed to the general term of the power of the Council.

Q. Do all Councils have the same power?

A. It's generally uniform within the Constitution.

Q. So that the District Council can call off a strike if there is one, is that right?

A. Well now, that's a question that the Council would have to make that decision.

Q. Do they have the power under the Constitution?

A. Within the body of the Constitution, they have certain limited powers set forth by the Constitution.

Q. In your 50 years' experience, could you tell me as to whether the Local District Council for the 11 locals

in Western Pennsylvania has the authority to call off a strike that's called by a Local?

A. I think the authority of the officers was given by the subordinate locals.

Q. Do they have it?

A. The locals have it, yes, and they may delegate it to the Council.

Q. Does the Council have it?

A. Not totally.

Q. Not totally. When you send a man around the country on trouble, does he have the power to tell a local union to call off a strike?

A. No, sir.

Q. Does he have any power to remove anybody from office?

A. No, sir.

Q. Through the authority in the International, in an individual case, can that be done?

A. No, sir.

Q. Did you do it?

A. No, sir. You mean our legal counsel?

Q. No, not your legal counsel. The council we have been speaking of at the International level?

A. No, sir.

Q. Who can remove, who can remove a—

A. There has to be charges preferred and the only ones that can do it are the General Executive Board of the International.

Q. Nobody else can remove the local head?

A. No, sir.

Q. If it is done, it's done extra-legally?

A. They got to get their day in court.

Q. Everybody has got to get their day in court?

A. Yes.

Q. Who first named Mr. Stirone as head of 1058?

A. I presume the local itself.

Q. When you sent him in here, there was no local, was there?

A. No, sir.

Q. What was his status when he came in here?

A. I suppose he gathered so many men together, they applied for a charter, formed the local and became a local autonomy.

Q. During the time he was doing that, he was also an employee of the International?

A. He was a consultant-conciliator.

Q. All that time, he was on a salary of the International, wasn't he?

A. At that time, I presume, yes.

Q. He was on a salary up until 1943, he was an International employee?

A. 1944.

Q. He was on a salary later again to the International?

A. '49 to '53.

Q. What happened from '44 to '49?

A. I suppose he was paid by the local and the Council. I don't know.

Q. But you didn't hire him during that period at all?

A. No, sir.

Q. Was there any particular reason?

A. Nothing particular. In Local 1058 an internal—an ultra-question or turmoil took place. Complaints were submitted to the International and we referred them to the vice president for investigation. During that investigation there were executive orders issued where the local refused to carry out these orders as reported by our vice president now deceased, the Executive Board, when he asked them to carry out the executive orders, told him that the local had decided they would not comply with no orders. I thereafter preferred—

Q. Who said that? Who said that?

A. The Administration, the Executive Board of the local.

Q. I see.

MR. CASEY: If the Court please, I object to any testimony concerning local turmoil at any time prior to the dates carried in the indictment in this case.

MR. TEITELBAUM: If the Court please, Mr. Stirone was president of the Council. Here's an International president telling us that the local authority of which Mr. Stirone was the head, told them they weren't going to carry out International orders. It seems to me that's relevant to his position as a labor leader in this community.

MR. CASEY: It would seem to me here the issue is entirely different. The day in court of which this gentleman speaks might be some place else on that local turmoil, local dispute between the local and the International. Certainly I am submitting to the Court that it has no materiality or relevancy here.

THE COURT: As I understand the situation the local at the present time is not affiliated with the International?

MR. TEITELBAUM: They are back in now, as I understand.

THE COURT: They are back in now.

BY THE COURT:

Q. Is that true?

A. They were never totally suspended. Well, I think if I finish my short statement, it might clarify it.

BY MR. TEITELBAUM:

Q. All right, sure.

A. And then I preferred charges against the local to our General Executive Board. The local Executive Board issued a mandate that the local would be suspended

and their members could join any other locals to maintain their membership. In the meantime, a court action was started and during that court action we accepted a per capita tax until the court action was disposed of in order to maintain the membership rights, benefits, and so forth.

In the early '45, either by decree or stipulation or agreement, the court action was terminated, the local was restored and the local fully cooperated with all the orders given previous and thereafter by the International and that settled that question.

Q. So that explains the brief period of time. But aside from that brief period of time, Mr. Stirone was in your union, was your local—was your representative here, is that correct?

A. He was in the territory, yes, sir.

Q. Again up to 1953?

A. He was on assignments then.

Q. Since '53, has he been an official of the International or had any position with the International?

A. He was never an official of the International.

Q. None at all?

A. No, sir.

Q. Since '53.

MR. TEITELBAUM: Cross Examine

* * * * * * *

[*Chronologically this should follow immediately after the three set of asterisks at 178a.*]

Q. Mrs. Rider, I think the last question yesterday was with reference to the next payment made to Nick Stirone after February 28, 1952. At that time the Court indicated that the best way might be to look at the checks, then you'd be able to tell.

A. The next payment was made on September the 4th, 1952.

* * * * * * * * *

[*Chronologically this should follow immediately after the row of asterisks at 182a.*]

AFTERNOON SESSION 2:00 p.m.

AT SIDE BAR

MR. TEITELBAUM: If it please the Court, I purpose to offer at this time the testimony of Mr. Hawthorne and Mr. Duval as to other similar acts; have them called to the stand. I wanted to have it on the record.

MR. CASEY: I object as being proof of an independent and unrelated crime res inter alia acta.

THE COURT: At this time the objection is sustained.

* * * * * * * *

[*Chronologically this should immediately precede the first row of asterisks at 187a and should immediately follow the last answer preceding that row of asterisks.*]

Q. Did you at any time go with Mr. Dierker to the Belle Vernon plant, at the Rider Supply Company batching plant, and have any conversation whatsoever with Mr. Rider?

A. Sir, I want to reiterate that I never met Mr. Rider, excepting on the basis of my previous testimony, neither at Belle Vernon nor anywhere else, other than those places that I have named, which was in the city of Pittsburgh three times prior to this courtroom. I went to Belle Vernon with Mr. Rider in the spring of 1952, as a guest of Mr. Rider. . .

Q. Now you use the word "Mr. Rider" . . .

A. Excuse me. I'm sorry, sir. The name is so entrenched in my mind that I certainly can't easily erase it from my mind.

Q. Well, whom did you go to Belle Vernon with?

A. I went to Belle Vernon, sir, as a guest of Mr. Robert Dierker, who wanted to show me, as a proud president of a corporation should, his new masterpiece, in his having constructed a new crushing plant at Belle Vernon, which was, as he put it, the finest thing in the business up until that time. And that, sir, was in the spring of 1952. And at that time the plant was not working, and he and I walked up to the top of that crushing plant; and as a matter of fact, adjacent to the crushing plant he pointed out to me the batching plant of the Rider Supply Company. And there was no one there that I knew at any time during my short visit there. That has been the only time that I have ever been to the Duquesne Slag Products Company Belle Vernon crushing plant during all the time that is under discussion.

[*We decided that we had to print all of the cross-examination of the appellant. Accordingly this part may be referred to in place of Pages 188a—211a. This includes those pages and much more.*]

Cross Examination

BY MR. TEITELBAUM:

Q. What date did you tell us that you came out of the Armed Services, out of the Army?

A. Sir, I didn't tell you that.

Q. When did you come out of the Army?

A. I believe it was approximately 1919.

Q. Do you know when you went in?

A. Offhand I can't say I remember but it was around 1916, '17.

Q. You can't remember whether it was 1916 or 1917?

A. I would say that it would be more in 1917.

Q. When you came out you got a discharge, of course?

A. Yes, sir.

Q. Naturally it was a honorable discharge to Nicholas A. Stirone?

A. Yes, sir.

MR. CASEY: Did you say naturally it was?

MR. TEITELBAUM: Yes, I said naturally. Naturally it was a honorable discharge to Nicholas Stirone?

A. I said yes, sir.

Q. Then when did you get married, sir, the first time?

A. I got married the first time April 9, 1921.

Q. What was your first wife's name?

A. My first wife's name was Angelina Facone Stirone.

Q. Do you remember the day of your first daughter's birthday?

A. I believe it was February the 12th, 1922.

Q. Your second daughter, when was she born?

A. I believe she was born February the 6th, 1932.

Q. Sometime in 1937 you left where you were engaged out in the eastern part of the country to come to Pittsburgh, is that correct?

A. It wasn't sometime in 1937, sir. I believe I testified that I came here on January the 2nd, 1937.

Q. Am I right that that's sometime in 1937?

A. I gave you the right date.

Q. Did your wife and your two children come with you, Mr. Stirone?

A. No, sir, they did not.

Q. Did they ever join you in Pittsburgh?

A. No, they did not. They visited me from time to time.

Q. And you, of course, always supported your family?

A. I assure you, sir, that I did support my family.

Q. On one occasion did your wife have to come to Pittsburgh with her two minor children to get some support from you?

MR. CASEY: Just a moment, please. That's objected to.

MR. TEITELBAUM: If it please the Court, on direct Mr. Stirone proudly said he was the father of two children, inferred he was a fine family man. Therefore I think this is proper cross examination.

MR. CASEY: I didn't say anything about he was a fine family man. He said he had two children. I object to the questions and the unfair tactics of the United States Attorney.

THE COURT: Put your objection on the record and let's leave the other comments off.

MR. CASEY: Yes, sir.

MR. TEITELBAUM: I think for the purpose of attacking the credibility of the witness, I am entitled to ask this sort of a question.

MR. CASEY: If the Court please, if I may say that in the test of any credibility of any witness, he can show only convictions of crimes in crimen falsi or felonies and they must be convictions. He is not permitted to ask this witness or any other defendant or any defendant in the case as to any methods concerning which there might be arrests.

MR. TEITELBAUM: No question of any arrest here. I haven't asked Mr. Stirone if he was arrested. I haven't even implied he was arrested.

MR. CASEY: In the State of Pennsylvania in the Quarter Sessions Court, there is no other method except by arrest for the support of wife and children that I know of.

MR. TEITELBAUM: I didn't ask if there were any court proceedings.

MR. CASEY: You are getting ready for it.

MR. TEITELBAUM: I am? I didn't know that.

THE COURT: In the Commonwealth of of Pennsylvania, you can start an action right up in our County Court without arrest. I will sustain the objection.

A. If the Court please, may I ask a question?

MR. TEITELBAUM: No.

THE COURT: No, no, you answer the questions, Mr. Stirone. Mr. Casey and Mr. Teitelbaum have to ask the questions.

Q. Prior to the time you were in the Army, when you come out of the Army, you were about 19 years old, is that right? That's about how old you were?

A. I believe I was more 18.

Q. You were 18 years old when you came out of the Army?

MR. CASEY: He said more 18.

MR. TEITELBAUM: More 18.

Q. Then you went to work as a laborer, is that right?

A. Yes, sir.

Q. You worked until 1924 as a laborer?

A. Yes, sir.

Q. You worked until 1924 as a laborer?

A. Yes, sir.

Q. And the most money you ever earned at that time was $20 a week, isn't that right, isn't that what you told us?

A. I did not say that, sir. I told you that I went to work for the Hudson Steam Laundry immediately after my marriage or honeymoon and earned $20 a week.

Q. How much did you make with Colgate?

A. That would be rather hard to remember at the moment but it probably was in those days, $25, $30 a week.

Q. Then it's fair to say that up to the end of 1923 you never earned more than $30 a week, is that right?

A. I don't know whether it's fair to say that or not.

Q. You said that?

MR. CASEY: Objected to as argumentative.

Q. Is it fair to say that or not?

A. It's not fair to say that.

Q. Did you earn more than $30 up until the end of 1923?

MR. CASEY: Just a moment, I have an objection as being argumentative. Apparently the Government's attorney—

THE COURT: Now just a minute. The question which is now propounded by Mr. Teitelbaum is not argumentative.

Q. Will you answer it?

A. Repeat the question, please.

Q. (Question read.)

A. I don't remember, sir.

Q. It was in 1923 that you joined the Cement Workers' Local Union No. 65 affiliated with the Hod Carriers, is that right?

A. Around that time.

Q. You weren't working for Colgate then, were you?

A. No, I was not.

Q. Who were you working for then?

A. I beg your pardon, sir. Correction. When I joined Local 65, I had quit working. I had just immediately then quit local—quit the Colgate Palmolive Peat Company and then sought employment in the construction industry.

Q. Did you go to work in the construction industry then?

A. Yes, sir.

Q. Do you remember what the pay was like back in those days?

A. If my memory serves me right, I think the pay was around 80 or 90 cents per hour.

Q. Did you work—

A. Maybe up to a dollar and a quarter per hour.

Q. Do you remember whether on the average now how many hours a week you'd work?

A. Well, sir, the construction industry is very seasonal and during the course of the season, you may work 10, 12 and 14 hours per day. You may work five days a week, you may work six days a week, depending on the nature of the job.

Q. Let me put it another way: Do you remember what you were making a year back in those days?

A. Well, sir, that would be hard to determine at the moment unless I went back and tried to dig into the record.

Q. Sure it would. Now then, in 1925—oh, you were secretary and treasurer of the State Association of Hod Carriers, weren't you?

A. Yes, sir.

Q. But you didn't get paid anything for that?

A. No, sir, excepting expenses.

Q. Then in 1925, you organized Local 526?

A. Yes, sir.

Q. And you became the president of that?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. You stayed as state secretary up until 1931, is that right?

A. I didn't say that at any time, sir.

Q. How long did you stay as secretary of the State Association?

A. I believe I remained as secretary of the State Association up until around 1928.

Q. Did you ever get any money for being secretary of the State Association?

A. I think I answered that a moment ago when I told you there was no salary attached to it excepting expenses.

Q. At any time all the way through?

A. That I can remember.

Q. Was there any salary connected with being president of Local 526?

A. Yes, sir.

Q. What is the salary?

A. Oh, I believe between ninety and a hundred, a hundred twenty-five dollars a week.

Q. While you were president and business representative of the local of Local 526 did you continue to work at the craft?

A. Sir, I was on full time as a paid representative of the local union.

Q. That's all you did at that time?

A. That's right.

Q. Now, do I understand, Mr. Stirone, that the union rules require that a man who is in such a position as president of the local is not supposed to have any other occupation?

A. Sir, that is dependent upon just what you are trying to get at.

Q. Not dependent on what I am trying to get at, it's dependent upon what the situation was.

MR. CASEY: That's objected to as argument between the witness and counsel.

MR. TEITELBAUM: I asked the question, Your Honor. I asked if the rules of the union provided that a man who held the position of union president and business representative was only supposed to do that and not have any other occupation.

MR. CASEY: Objected to as not proper cross examination.

THE COURT: Objection overruled.

A. Sir, that particular question can best be answered on the basis that each local union makes its own regulations, being an autonomous body they may engage one from outside of their union to be their representative in the field. That has happened many, many times.

Q. That isn't responsive, sir.

A. If you want to clear the record so that you won't repeat the question, I want to say to you I did not have an exclusive contract with Local 526 for all of my services, and I had the right and the liberty to do any other kind of work just so long as I took care of their business affairs.

Q. So you did then have the right to work outside the craft?

A. I did.

Q. When Mr. Moreschi was on the stand my recollection was that he testified that a person in that position could only work at the craft and if he left the craft, he was not eligible to be in the union any more. Was he incorrect so far as you were concerned?

MR CASEY: Objected to as argument. It's not my recollection he said that.

MR TEITELBAUM: Mr. Casey is interfering here with the answers to the questions.

THE COURT: Objection overruled.

A. Repeat the question again.

Q. (Question read.)

THE COURT: Do you wish to make an objection?

MR CASEY: I further object upon the basis that is for the jury to determine whether Mr. Moreschi was wrong or not.

THE COURT: Objection overruled. Now answer the question.

A. Sir, you introduced the Constitution of our international Union into evidence. That Constitution specifically states that to be an officer one must work at craft and that's where it ends.

Q. What did Mr. Moreschi—when I asked you whether Mr. Moreschi would be wrong if he said that?

A. Sir, I can't remember very clearly what Mr. Moreschi answered and what you asked him, but I can quote the Constitution because it's here and the Constitution specifically states that to be an officer one must work at the craft.

Q. If you do not work at the craft, if you work at anything else, are you ineligible to be an officer?

A. At the time of your election?

Q. At any time, Mr. Stirone, if you cease to be eligible, once you work at some other craft?

A. No, sir, it does not say that.

Q. So a man then who is elected an officer of the union after his election can go out and work at some other profession, trade or calling?

A. He may work at anything that he is able and qualified to do, providing of course, that he services his membership, his organization or that office to which he is elected in a manner which is satisfactory to the membership of that union, International Union or District Council.

Q. During the period when you were in New Jersey when did you stop being the state officer, around 28?

A. When you say state officer, what district do you mean?

Q. Secretary and treasurer of the state association of the Hod Carriers?

A. I believe I ceased becoming—I ceased being the secretary-treasurer around 1928.

Q. Did you go up into New York to do some work?

A. At that time I was designated as the representative of the International Union and on that basis, I was subject to being sent anywhere in the country.

Q. Let me ask you, Mr. Stirone, could an international representative work at any other trade or calling?

A. An international representative would have the same rights on the basis that I have explained in the previous question, provided that he serviced the International Union he could do whatever else he needed to do or ordered to do.

Q. Did you get a salary?

A. Yes, sir.

Q. What was your salary as international representative—general representative, excuse me?

A. In 1928?

Q. Yes.

A. I think it was three or four hundred dollars a month plus expenses, or rather, pardon me, let me correct

correct myself, it may have been six or seven hundred dollars a month; then in 1931 or '32, the entire staff of the International Union took a voluntary cut and at that time, the salary was I think, around $300 a month plus expenses.

Q. You remained as such international general representative until when?

A. Until 1943 or thereabouts.

Q. At any time thereafter, did you have any job or duties with the International?

A. Yes, sir.

Q. When?

A. I believe the International Union requested me to do part time work for them beginning in 1947 or '48.

Q. How long did you do that?

A. Until 1952 or '53. I think it was until the end of 1952 or '53. The record will show that if you want to go into it that way.

Q. So all the time then from 1948 to 1952, you were on a part time basis as a representative of the International Union, is that correct?

A. I was on a part time basis as a representative of the International Union only to do those things which were assigned to me by the International Office.

Q. Did you get a salary, sir?

A. Yes, sir.

Q. What was it?

A. $450 a month.

Q. That was for this part time work that you are talking about?

A. Yes, sir.

Q. During the period of time that you were working out in New Jersey as president of Local 526 when you were earning $90 to $125 per week and you were—subsequently you had started to work with the International and you were working, making six to seven hundred

dollars a week. Now am I correct that they overlapped or not?

A. You said six to seven hundred dollars a week.

Q. Per month, I am sorry. Did they overlap?

A. What do you mean when you say overlap?

Q. Were you at any time working for Local 526 and also as general representative for the International?

A. Yes, sir.

Q. So during that period of time you were receiving both of those salaries, is that correct?

A. That's right.

Q. While you were servicing the local and while you were working for the International, did you have any time to engage in any other trades or occupations or businesses or professions?

A. Well, sir, I may have although I don't remember. It's quite a long time back but you see some people enjoy working and doing things and others enjoy playing and I think I happen to be one who enjoyed working all my life and doing things.

Q. You don't remember back while you were in New Jersey, you had any other trade or occupation or not?

A. At the moment I don't but if we want to go into the record I think we can establish that.

Q. You tell me. I don't know.

A. Well, I told you at the moment I don't.

Q. It was sometime in 1937?

A. It was on January 2nd, 1937 that you came to Pittsburgh, is that correct?

A. Yes, sir.

Q. At that time what was your capacity when you came here?

A. I was a consultant and a conciliator for the International Hod Carriers, Building and Common Laborers Union of America.

Q. Who sent you here?

A. I was assigned here by Joseph V. Moreschi.

Q. Had there been any dispute between you and Mr. Moreschi in New Jersey about union matters prior to your coming here?

MR. CASEY: That is objected to as cross examination on immaterial matters.

MR. TEITELBAUM: As I recall—

THE COURT: Objection overruled.

A. Had there been? Did you say had there been any trouble between Moreschi and I?

Q. Yes.

A. No, sir, there had been no trouble between Moreschi and I. He was the International president and it was his authority to assign me anywhere in the country.

Q. Had there been argument about the organization in New York of the Sand Hogs and what type of local was to be organized up there?

A. Sir, there was a great deal of trouble about the sand hogs in New York and it was not over the type of organization that should have been organized. The Terminal and Compressed Air Workers was a separate international organization of their own until I believe in 1917 there was a merger of the two thereby the International Hod Carriers, Builders and Common Laborers Union absorbing the Compressed Air Workers. In 1929 there was an internal dispute that broke out between a number of factions in that local union. One or more of those factions solicited the aid and support of the International Union to come in and make an adjustment and straighten out the situation.

At that time, the International Union selected me to go and act as trustee for the local union to try and straighten out its affairs and create peace and harmony between the factions in that union. If my memory serves me right, at that time there was what is known an Irish

faction and what was known as an English faction. I tried diligently to get the two groups together and I was unsuccessful. Eventually the International Union thought that it would be better to issue another charter to the English faction.

Q. Did you disagree with that?

A. Sir?

Q. Did you disagree with that?

MR. CASEY: Objected to as not cross examination.

THE COURT: Well, whether or not he agrees to it really isn't material to the issues in this case in any respect is it, Mr. Teitelbaum?

MR. TEITELBAUM: I just wanted to ask him whether he and Mr Moreschi had a dispute about that, that's all.

MR. CASEY: I submit it's not a question what he wants to ask him. He's got to confine his cross examination to those things relevant and material to things which were asked on direct examination.

THE COURT: Objection sustained on that basis.

Q. You first came to Pittsburgh on January 2nd, 1947?

A. Yes, sir.

Q. And where did you go to live when you came to Pittsburgh?

A. Roosevelt Hotel.

Q. You lived alone there, of course?

A. Yes, sir.

Q. Your wife and children never came to Pittsburgh, is that right?

A. I believe I told you a few moments ago that my wife and child at that time visited me sporadically and I

want to add to that that I in turn visited them many times back home.

Q. Of course, your second child was born in February of '32, is that right?

A. Yes, sir.

Q. You came here in January of '32, is that right?

A. Sir, how many times must I repeat that I came here January 2nd, 1937, not '32.

Q. '37, not '32. Your oldest child was born in '32 your second was born in '32 so you had two children when you came?

A. That's right.

Q. I understood you to say my child at that time.

A. My error.

Q. Your error, that's right. When you came you undertook rather extensive duties here in Pittsburgh, didn't you?

A. Sir, when you say extensive, just what do you mean?

Q. Well, you undertook to bring all the locals of the Hod Carriers Union together into a Laborers District Council?

A. I did not say that at any time, sir.

Q. You wanted to work with a common purpose?

A. I did not say that, sir.

Q. When did you organize 1058?

A. 1058 was organized on May 27, 1937, and as a matter of fact, that is the date of its charter. There were meetings held prior to that date but the formal date of the issuance of a charter is May 27, 1937.

Q. On direct examination Mr. Casey asked you how you went about organizing, is that correct, and you told him that you'd go into a district and you would speak to the workers as to the conditions in that area, that you would find whether there were people who were desirous of organizing and then you would apply to the Inter-

national for a charter by paying a fee; is that correct?

A. Somewhat.

Q. You tell us then what you did, how you organized?

A. Actually, sir, in 1937 there was a crying need for organization. There wasn't much solicitation needed to organize people. They sought out people to organize them.

Q. Did that remain the condition all the way through your career in Pittsburgh?

A. Pretty much, sir.

Q. You would go out into an area and find out what the conditions of labor were and what the problems of the individual laborers were and the circumstances and working conditions and then ask the men if they wanted to join up in the union, is that what you did?

A. Sir, when I came here in January of 1937 after having made a survey, I discovered that the laborers in the heavy construction industry were enjoying the immense hourly wage rate of from between 35 and 45 cents per hour. This was in early 1937.

Q: I don't want to interrupt this, but I think you ought to limit yourself to my question. I am asking you about the methods you used in organizing and not what the economic conditions were.

A. If you afford me the opportunity—

MR. CASEY: If the Court please, I object to the actions of the United States Attorney in interrupting the witness and not giving him an opportunity.

THE COURT: The witness is not answering the question.

MR. CASEY: If the Court please, I do not object to the question. I asked questions on cross examination with several other witnesses here and I was met with repeated objections along the same line

of the attorney testifying. The question which he was asked has at least five parts that I can understand and be objected to all of my questions upon that basis.

THE COURT: Put your question one thing at a time Mr. Teitelbaum. Repeat your question.

Q. Tell me what you did to organize unions, what your activity was, how you did it.

A. Sir, either I went to the various jobs and talked to the workers or the workers came to me, dependent upon the individual situation at that time. When they were assembled I inquired as to their conditions and what their desires were in the way of an organization or creating an organization or becoming affiliated with one that was already in existence. From that time on, if there was no organization in that district an application would be made by that group and I would lead them as to the manner in which an application should be made and the proper method of application and then as soon as the charter came I instituted the officers and helped to set up the pattern of operation for that particular local union and in that way got them started off as to how they should operate within the Constitutional provisions of our organization.

Q. Is that the way you have conducted yourself ever since—from the time you came to Pittsburgh until now in organizing?

A. Yes, sir.

Q. Mr. Stirone, did you ever send gangs of two and three hundred men out under instructions to drive the workers off the jobs to use strong arm methods?

MR. CASEY: Just a moment, that's objected to.

THE COURT: Objection overruled.

A. Sir, I want you to thoroughly and distinctly understand,

Q. Just answer my question. We don't need that.
A. I will answer you the best way I know how.

MR TEITELBAUM: If it please the Court, one occasion Mr. Casey insisted my witness answer the question yes or no on cross examination. Now I want Mr. Stirone to do that.

A. No.

THE COURT: All right, there is your answer.

Q. Did you give any instructions to anybody or ask anybody to use any violence in connection with anybody as far as union activities were concerned?

A. Not that I can remember.

MR. CASEY: I object to the line of questioning. It has been the law of Pennsylvania and I think that this court as long as I know that if any questions involve the probable commission of a crime of which these questions seem to indicate, the District Attorney or the United States Attorney can not ask it. The question before this.

THE COURT: Don't get excited now.

MR. CASEY: It imputes within it the commission of a crime which they can not ask a defendant. He knows that or should know it.

MR. TEITELBAUM: I have not asked—

MR. CASEY: I said imputes.

MR. TEITELBAUM: I have not asked whether the defendant committed a crime. He has given me an answer, the same answer that he gave Mr. Casey on direct testimony. Now, if he did something to the contrary if that isn't true, I am entitled to question his credibility as to that and the Act of 1911 has no application.

The Act of 1911, of course, forbids me from saying to Mr. Stirone, did you ever commit robbery, did you ever commit larceny, did you ever commit anything else? It doesn't go any further than that.

MR. CASEY: It certainly goes as far as whether you are an aider and abettor, as you have use here once before relating to the commission of assault and battery doing aggravated assault and battery degradation of life and property so it is the commission of a crime.

MR. TEITELBAUM: The act —

THE COURT: I have it right here.

MR. TEITELBAUM: I submit that I am not impeded from testing the credibility of this witness by a contention that the conduct to which I am attempting to elicit would incidentally by some stretch of imagination perhaps indicate a crime. Now I haven't asked this man whether he ever committed a crime or was he ever charged with a crime, was he ever convicted of a crime and I am not going to ask him because I am not allowed to and I know it, but this is relevant and proper cross examination.

MR. CASEY: By the same token I say it is not relevant and proper and under the Act of 1911 he is not permitted to ask it because he knows what it involves. There's other ways. The Act provides the defendant can not be asked.

MR. TEITELBAUM: I don't think it does. They were trying in that Act to take care of the situation ——

MR. CASEY: You were hardly around at the time of the passing of this Act.

MR. TEITELBAUM: I know I am younger than you are.

THE COURT: Well, I don't think the relative ages of counsel are the material issues in this case.

MR. CASEY: At least he doesn't have a "halo" in the back of his head, like I have, yet.

MR. TEITELBAUM: I will have twenty years from now.

MR. CASEY: I said yet.

THE COURT: All right, gentlemen. Let's get it out of your system.

MR. TEITELBAUM: I'm not mad at anybody.

MR. CASEY: I'm not mad at anyone. And I think the rights of a defendant in this court are to be protected to the best of my ability, and that is all I am doing—and if it entailed getting mad at you.

THE COURT: I think the question is objectionable, and I will sustain the objection. It could be rephrased however.

BY MR. TEITELBAUM:

Q. Did you ever give instructions to anyone to take any sort of action against various contractors in an effort to require their employees would become members of the Union?

A. The only action I have ever taken is that which has been delegated to me by either the membership of Local Union No. 1058 or the Laborers' District Council of Western Pennsylvania.

Q. And what kind of action is that?

A. That would be dependent upon what the problem might be at the moment. If there was a strike and the Laborers' District Council of Western Pennsylvania or Local 1058 instructed me to do any certain act, of course the act would have to be within the law and within the Constitutional provision, or otherwise I wouldn't carry it out anyway.

Q. So that if there was any type of conduct which was not within the law, then you wouldn't have done it. Is that correct?

A. Yes, indeed.

Q. Then your answer would be no, as to whether you directed any type of conduct except that which was properly within the law. Is that correct?

A. I have only at all times directed conduct within the law.

Q. During the year 1937—that is the first year you were in Pittsburgh, Mr. Stirone — you were still, of course, a general representative of the International?

A. Yes, sir.

Q. And did you, in the course of your duties with International, go over the western part of Pennsylvania?

A. Did I go over the western part of Pennsylvania?

Q. Yes. Did you have duties involving the western part of Pennsylvania?

A. Yes, sir. But I think I made it plain in previous testimony—

Q. Well, sir, if you did, I wouldn't be asking the question. Just answer the question.

MR. CASEY: Now, if the Court please, I object to this. I don't know myself what is the question now, in view of the colloquy between the attorney and witness.

THE COURT: Just a moment. We will have it read, Mr. Casey.

(Question and answer read, as follows: "Q. Did you have duties involving the western part of Pennsylvania?

A. Yes, sir. But I think I made it plain in previous testimony —".)

MR. CASEY: May I have my objection on the record, as not cross examination?

THE COURT: You may inquire as to his duties, Mr. Teitelbaum.

Q. Did your duties require travel throughout western Pennsylvania?

A. Only upon assignment by the general president.

Q. During the year 1937 did you get such assignments?

A. I got various assignments to go various places. To pinpoint it, to pinpoint any specific place, I would be unable to do unless I got the record complete from the home office.

Q. Were you sent by the International president beyond the district of western Pennsylvania in that year?

A. I may have; I don't remember.

Q. Now, what date did you tell me 1058 was organized?

A. May 27, 1937.

Q. And over what area did you include people in 1058? What was the jurisdictional area of 1058?

A. Allegheny County at that time. And since that time it has been extended to include Butler, Westmoreland, Fayette, Washington, Greene, Beaver Counties.

Q. Now, what was your salary from 1058?

MR. CASEY: That is objected to, as immaterial.

THE COURT: Objection overruled.

A. In 1937 I believe I wasn't getting any salary. I was elected the president of 1058, I believe the Local Union voted me a salary of probably a hundred or a hundred and some dollars a week.

Q. Of course, you continued to get your salary from International during this period?

A. Yes, sir.

Q. Of six or seven hundred dollars a month?

A. Yes.

MR. CASEY: Just a moment. If I may interpose one of your apparently well taken objections, Mr. Teitelbaum, to the same type of question that I was accused of having asked, I object to it and ask that the question be reread.

THE COURT: Will you read the question for Mr. Casey, Mrs. Thomas?

(Preceding questions and answers read, as follows: "Q. Of course, you continued to get your salary from International during this period? A. Yes, sir. Q. Of six or seven hundred dollars a month? A. Yes, sir.")

MR. TEITELBAUM: It is a leading question, of course, but this is cross examination.

THE COURT: That is right, it is cross examination. The objection is overruled.

Q. During the year 1937 did you have any other occupation, profession or job except for 1058 and the International?

A. Not that I can remember.

THE COURT: Perhaps this would be a good time to take our afternoon recess, members of the jury.

(Short recess taken at this time.)

BY MR. TEITELBAUM:

Q. Mr. Stirone, when you came here on January 2, 1937, from New Jersey, did you come alone?

MR. CASEY: Objected to, as immaterial and not cross examination.

A. I came alone, sir.

Q. Didn't Tom Pecora come with you?

A. No, sir.

Q. When did Tom Pecora come?

MR. CASEY: Objected to, as not cross examination.

THE COURT: Objection overruled.

A. Sir, I would have no knowledge of when Tom Pecora came to the city of Pittsburgh.

Q. Did he work with you in New Jersey?

A. No, sir.

Q. Did you know him in New Jersey?

A. No, sir.

MR. CASEY: Objected to, as not proper cross examination.

THE COURT: Objection overruled.

Q. When did you first meet him?

A. I met Thomas J. Pecora here in the city of Pittsburgh, I believe in 1938 or '39.

Q. And nobody else, no other Union man or assistant to you, came with you in 1937?

A. No, sir.

Q. In 1938, aside from your duties with the Union, did you have any other profession, business or occupation?

MR. CASEY: Objected to, as not proper cross examination, and immaterial.

THE COURT: Objection overruled.

A. Sir, I noted that you placed—

Q. Please.

MR. TEITELBAUM: If the Court please, will you instruct the witness to answer my question?

MR. CASEY: Just a moment.

THE COURT: Just a moment, now. Just answer the question, Mr. Stirone.

MR. CASEY: May I have the question—I can't remember whether it could be answered yes or no.

THE COURT: I didn't ask him to answer it yes or no.

MR. CASEY: Mr. Teitelbaum did.

MR. TEITELBAUM: I asked him whether he had any other business, trade, profession or occupation.

A. In what year, sir?

Q. In 1938.

A. In 1938, sir, if it satisfies your ego, I was trading in the stock market, investing my money.

MR. CASEY: Just a moment. I move that the testimony of the witness be stricken from the

record, as not responsive to the question, because I don't think that is any occupation.

THE COURT: I don't think it is responsive.

MR. TEITELBAUM: It is his answer. He still hasn't answered my question.

THE COURT: We will strike the answer from the record, Mr. Teitelbaum, because I do not deem it responsive to your question.

Q. Now, will you satisfy my ego by answering my question?

A. Sir, perhaps I don't understand you when you state "other trade, occupation or profession"—

Q. I forgive you. Answer my question

A. The only thing that I can remember is that in 1938 I may have invested some money in the drilling of oil—for oil, and I made some investments in the stock market. Now, other than that I don't recall about any other avocation, profession, or anything else.

(Two documents marked respectively Government Exhibit No. 42 and Government Exhibit No. 43.)

Q. I show you what has been marked Government Exhibit 42 and ask you if that is a copy of your 1937 income tax return.

THE COURT: What year is it for?

MR. TEITELBAUM: '37.

MR. CASEY: You say that is the income tax return?

MR. TEITELBAUM: I asked Mr. Stirone that.

MR. CASEY: If it is the return?

MR. TEITELBAUM: If it is a copy of his 1937 income tax return, yes, sir.

MR. CASEY: Is it a copy or an original, sir? May I inquire as to that?

MR. TEITELBAUM: That is what I asked Mr. Stirone, Mr. Casey.

THE COURT: As I understand the question, Mr. Casey, is this a copy of his 1937 income tax return?

MR. CASEY: I would like to know whether—

MR. TEITELBAUM: Now, wait. Let the witness answer the question.

MR. CASEY: I am going to move that this evidence—if it is shown that it is taken by the Government from the files of the Internal Revenue Bureau, I ask that the evidence be suppressed, under the Constitution. That is why I am asking whether or not it is without legal authority brought here by them. If it is subpoenaed here to court, his income tax return, a copy of it, I have no objection to it. If it was taken from the records of the Government, I think it is illegal and unlawfully acquired evidence, and I move for the suppression of it. And I think I have a right to find that out.

MR. TEITELBAUM: You can't ask Mr. Stirone that.

MR. CASEY: I can ask you that.

MR. TEITELBAUM: I tell you that I obtained that evidence—that I have it pursuant to a subpoena, and that I have shown it to him and asked him what it is.

MR. CASEY: May I inquire then whether the subpoena was directed to the Internal Revenue Bureau or any Bureau of the United States Government?

MR. TEITELBAUM: Yes, it was.

MR. CASEY: Then I renew my motion.

THE COURT: You what?

MR. CASEY: I move that the evidence be suppressed, upon the basis it is illegally acquired.

It is his—under the Constitution of the United States and under the Internal Revenue laws, this man or any arm of the government has no right to pry into the private affairs of a taxpayer, and this is illegal evidence, against the Constitution—procured against the Constitution. And besides that, I am amazed and surprised at the tactics of the United States Attorney's Office in doing it. He knows it is illegal.

MR. TEITELBAUM: Not only do I not know it is illegal, I am convinced it is not illegal. The evidence was not obtained illegally from this defendant. Therefore he has no right to ask for any suppression—

MR. CASEY: If the Court please,—

MR. TEITELBAUM: Now, let me finish, Mr. Casey. I have shown him a document and asked him what it is. Mr. Casey asked me—although I don't think he had any right to ask me—where I got it. I told him where I got it. I think now Mr. Stirone has a right to answer whether it is a copy of his 1937 income tax return.

THE COURT: Yes. Just answer yes or no. Now, it depends on what he is going to do with it after that, Mr. Casey.

MR. CASEY: If the Court please, even that is sufficient, under the Constitution, I think it is the Sixth Amendment. The Government compels him to file an income tax return, and then brings it in here. I move that is be suppressed.

THE COURT: The objection at this time is overruled.

A. I assure you, sir, I have no hesitancy in telling you it is my return.

Q. Now I show you what is Government Exhibit 43, and ask you what that is.

MR. CASEY: I have the same objection, if it is received in the same way.

Q. (Continuing) Is it a copy of your income tax return?

MR. CASEY: Just a minute. And besides that, I want to place on this record—

THE COURT: Well, we will give you all the opportunity in the world.

MR. CASEY: I want to place on this record, if this document was obtained by any subpoena, the only way a subpoena can be used, according to law, is bring in the person to whom the subpoena is directed, bring him into court and ask him the questions under oath. And that if this man or any other person in his office or the Federal Bureau of Investigation got this, I charge that it is illegal and an attempt at making a man give evidence against himself.

MR. TEITELBAUM: When a witness takes the stand in his own behalf he waives any privilege against self-incrimination.

MR. CASEY: No, he doesn't.

THE COURT: That is the only thing he doesn't waive.

MR. TEITELBAUM: Well, we are entitled to question him as to any matter that is pertinent to this case.

THE COURT: That is right, you are. But he is not required to answer anything that might tend to incriminate him. There is no question about that. I agree with Mr. Casey on that proposition.

MR. CASEY: And that is what he is doing here. Here he has access to private and personal files on the part of the United States Government. He says he has subpoenaed them. How he has any authority to subpoena them into his custody I am at a loss to know. And I call upon the Court to

make some comment in so far as the United States Attorney's Office, and this Assistant in particular relating thereto.

THE COURT: Is that your objection?

MR. CASEY: Yes, sir.

THE COURT: Now, you answer the question, Mr. Stirone. Just whether or not that is a copy of your income tax return.

A. I am proud to tell this Court and jury it is my return.

BY MR. TEITELBAUM:

Q. All right, sir. May I have it? Now, sir, in 1937—

MR. CASEY: Just a moment. I think, as far as we have gone here, even though I do deem it illegal, unfair, and a few more things, I think I am entitled—just the same as Mr. Teitelbaum stood at my elbow many times—I think I am entitled to see the document.

MR. TEITELBAUM: I haven't put them in evidence. I just asked Mr. Stirone some questions.

MR. CASEY: I think I am entitled to see them, sir.

THE COURT: I think he is entitled to see them, Mr. Teitelbaum.

MR. TEITELBAUM: All right, sir.

THE COURT: Now, there is a statute covering this.

MR. TEITELBAUM: Covering what, sir?

THE COURT: His income tax return.

MR. TEITELBAUM: I haven't placed any income tax returns in evidence.

THE COURT: No, you haven't.

MR. TEITELBAUM: I am asking some questions, and that is all I have asked.

MR. CASEY: If the Court please, in addition to my previous objection, I object to the questions upon the basis that the questions are being asked upon matters which are collateral to this issue and not having been asked in direct examination.

THE COURT: I don't know what these show, but let me have a look at them will you, plaese?

(Exhibits No. 42 and No. 43 handed to the Court.)

Q. Now, do you recall whether in 1937 you had any other income, other than your salary from your profession—from your work as a general representative of the International Hod Carriers and as president of Local 1058, in 1937?

MR. CASEY: Objected to, as not cross examination: and cross examination on a collateral matter.

THE COURT: Objection overruled.

A. Sir, you have presented my income tax returns. They speak for themselves. You may read them. You have my privilege to read my income tax returns. I am proud for you to read them; I am not ashamed.

Q. I just wanted to know whether this refreshed your memory as to whether you had any other income.

A. The tax returns speak for themselves. You may read from them.

THE COURT: Mr. Stirone, I direct you to answer the question. Did you or did you not have any income other than that?

A. If Your Honor the Court please, I believe I have answered the question originally when I told the District Attorney that I had invested my moneys in the stock market, and that if he called that an avocation or profession, yes, that I had. And that is what the return shows, sir.

Q. Now, you have told me that I have a privilege of reading this and asking you about it. Is that right?

A. Yes, you may.

MR. CASEY: As I say, I accord you the privilege of it. I deny your right to them and criticise you for having gotten them.

THE COURT: Just a minute, Mr. Casey. You have put your objection on the record.

Mr. Teitelbaum, so that we may get this matter cleared up, I will give you the privilege of again asking Mr. Stirone what income he had and what were the sources, for the year 1937.

MR. TEITELBAUM: All right, sir.

Q. What was your income and what were the sources for the year 1937?

A. Net income on Item 12 minus 19 was 7,945.42. The sources of income, sir, were the International Hod Carriers, Building and Common Laborers' Union of America $2872, $1370 traveling expenses, being the allowed reimbursement expense of $1370. Then on page 3, Description: 4 lots of various stocks bought and sold through Sutro Brothers & Company—Let me see here if I get this clearly. Gross Income—let me see—10-21-39, 10-28-37, one week, $13,527.85; Cost or Other Basis, 10,414.33; Gain or Loss, $3,113.52. And then on 11-10-37, Contract Price 4,030.41; Cost or Other Basis, 3,815.00; Profit or Loss, $215. And then 100 General Electric, Cost 3,675.02; Cost or Other Basis, $4,000; the loss on this transaction was $339.08. It shows here a gain of $2,989.85.

Q. That, of course, is the item under Item 10. Right now there is another item, Item 11, Other Income, $2,720. Is that right?

A. It so states here on Item 11.

Q. Do you remember now what that—how you earned that $2720?

A. At the moment I do not, sir.

Q. Now, for 1938 did you also have other income outside of stocks or salary from the International or salary from Local 1058?

A. It shows on 11, "Other Income. Exclude income from annuities. State nature. Use separate schedule, if necessary." $9,100.

Q. Do you recall now how you earned that $9,100?

A. At this particular time it would be hard to remember; but if I paid income tax on it, you can rest assured that I earned them somewhere.

Q. Oh, yes. Now, your total salaries during those years were less than—in '38 was less than $3500, wasn't it?

A. The record speaks for itself.

Q. Does that refresh your memory (handing Exhibit 43 to witness)?

A. This shows $3500 for salary.

Q. And other income of in excess of nine thousand dollars?

A. That's right.

Q. And at this time you can't remember where the nine came from?

A. For the moment I can't; but it is highly possible.

Q. Do you remember one time having a conference where you were under oath, down in New Jersey, about the source of that income back around 1937—back around '39 or '40?

MR. CASEY: If the Court please, I object to the line of questioning, as cross examination upon a collateral matter. It would take time in order to go back and dig out those records, if necessary, to prepare this witness in so far as that is concerned. I asked no questions relating to any income during the course of the direct examination. If this is to be an inquisition as far as this man is concerned, I want my objection upon the record. To ask a man to go back twenty years as to his income, and without

his books or papers other than his income tax return, I think is unfair—

THE COURT: Well, he has already testified he doesn't remember, Mr. Teitelbaum.

MR. TEITELBAUM: No, he hasn't testified he doesn't remember whether he had a conference. I just asked him whether he had a conference, under oath, that he can remember.

MR. CASEY: The same thing applies there.

MR. TEITELBAUM: Well, he can answer it, and if he doesn't, he doesn't.

A. Am I to answer, Your Honor?

MR. CASEY: Just a moment. If the Court please, if I may break in and say that there is one indictment here at—whatever the Criminal No. is—

MR. TETIELBAUM: But a man that can remember—

MR. CASEY: Just a moment, please. For my record.

THE COURT: Let Mr. Casey finish.

MR. CASEY: There is one Criminal Action here, at 14871, in which there has been a bill of particulars in addition to the indictment. And I say to this Court that all we are called upon to answer at this time is this matter involved here. And that to let the Government question on collateral matters, which might be for the purpose of contradicting him later, is not proper under these circumstances.

MR. TEITELBAUM: When a man has testified that he can remember the precise date in 1937 that he arrived in Pittsburgh, can remember the precise room in his hotel—the precise hotel he stayed at, can remember who came with him, he can remember just exactly his various procedures in organizing unions, I don't think it is out of line to remember how much money he made.

MR. CASEY: He told you nobody came with him.

MR. TEITELBAUM: I want to test his memory here.

MR. CASEY: You may do that, sir. But I submit you can't do it on collateral matters. I have no objection to your doing it on any questions arising in direct examination.

THE COURT: Well, I will sustain the objection as far as the question pertaining to that particular conference is concerned. I don't know what that has to do with this at all.

Q. Do you remember whether you ever had a conference about your income, at which time you were asked to take an oath?

MR. CASEY: Now, if the Court please, it is the same matter.

THE COURT: Yes. I sustained that objection.

MR. TEITELBAUM: I thought that was your objection.

THE COURT: No.

Q. Now, Mr. Stirone, when you came here in '37, you stated that there were certain Local Unions already well established. Is that right?

A. Yes, sir.

Q. What were the numbers of those Unions?

A. Local No. 11, Local 226, Local 136, Local 347, and I believe there was a Local known as 193.

Q. There was also 173, wasn't there? Didn't you testify as to Local 173?

A. Yes, sir; 173, yes.

Q. And also on direct examination didn't you tell us there was a 347?

A. I just said there was a 347.

Q. Oh, I'm sorry; I didn't hear you say that. Now, those were all members of the local District Council. Isn't that right?

A. I cannot swear that they were all members of the Pittsburgh Laborers' District Council. It is highly possible that they all were.

Q. Now, you know the constitution of your Union, do you not?

A. I think I do.

Q. Yes, sir. Is there a provision in the constitution of your Union that where there is a District Council then all Locals must belong to that District Council?

A. There is a provision to that effect.

Q. In compliance, then, with the constitution, would all of those Locals be in the District Council?

A. Those Local Unions that I have mentioned, it is highly possible that they were members of the Council.

Q. And when was 1058 formed?

A. 1058 was formed on May 27, 1937.

Q. And when did it join the District Council?

A. At its reorganization in November the 12th, I believe in 1947.

Q. So that from '37 to '47, despite the provision of the constitution, Local 1058 was not a member of the local District Council. Is that correct?

A. That, sir, was done with the explicit

Q. Is that correct?

A. It is correct

Q. All right. Thank you.

BY MR. CASEY:

Q. You may explain it.

MR. TEITELBAUM: Now wait a minute. You may explain on redirect, just as I was restricted to do.

THE COURT: Just a moment.

MR. TEITELBAUM: I'm sorry, sir.

THE COURT: Proceed with your questioning now.

MR. CASEY: I think, a yes or no answer, the witness has a right to explain.

THE COURT: I will let you ask him about it later.

BY MR. TEITELBAUM:

Q. And it is the job or the duty of the local District Council, is it not, under the constitution, to determine wage rates in the district as far as common labor?

A. In accordance with the constitution, it is within the province and authority of the Laborers Council, in meeting assembled, to establish the wage rates for the area; for the jurisdiction upon which that Council has been organized and granted authority on.

Q. All right. Now, the local District Council in Pittsburgh had jurisdiction in Pittsburgh and Allegheny County, didn't it?

A. Specifically for building construction, sir.

Q. Is that all it had authority for?

A. At that time, yes, sir.

Q. And what was 1058 concerned with?

A. 1058 was concerned with streets, sewers, highways, bridges, dams, abutments and the supply of industry in Allegheny County.

Q. Mr. Stirone, I show you Government Exhibit 6. That is your constitution, isn't it?

A. Sir, that has been substituted for this one (producing document), at your request.

Q. I think Government Exhibit 6 is in evidence, and that is the one I am showing you, and ask you if that was your constitution.

A. That was the constitution.

Q. All right. You have a present constitution in your hand?

A. Yes, sir.

Q. Open it up to where it talks about District Councils and says who may belong to it.

A. Where do you want me to begin to read, sir?

Q. Where it says the make-up of District Council.

MR. CASEY: If the Court please, as I have had it put to me several times during this trial, the exhibit speaks for itself. I object to the witness reading it. He doesn't have an exhibit.

MR. TEITELBAUM: He has one he got out of his own pocket, and I just want to know what it is

MR. CASEY: Then I suggest it be marked as an exhibit.

THE COURT: Is it the same thing you have there?

MR. TEITELBAUM: No, sir, it is not. All right. Let's find out about it.

Q. Is that the present constitution of your Union?

A. This is the present constitution, as amended by the Thirteenth Convention of October 15 to 19, 1956.

THE COURT: Has one of those been offered in evidence?

MR. TEITELBAUM: I want to look at the exhibits here—

A. If I may be permitted, sir—

THE COURT: Just a moment, Mr. Stirone.

Q. Mr. Stirone, I show you Government Exhibit 6, in lieu of that one, which is the constitution that is in evidence. Now, looking at that constitution, can you tell me what the provisions were as to who will belong to the District Council?

A. Sir, I would like to explain to you—

Q. Just first do what I ask you.

A. If you are asking —you ask me specifically what article to identify, and I will be pleased to identify it.

Q. You are familiar with the constitution. But I will look for it.

A. Well, it seems I can't find the correct answer for you.

MR. CASEY: This colloquy is going on; I can't hear it.

THE COURT: Your client asked Mr. Teitelbaum to point out the provision of the constitution that he is referring to.

MR. CASEY: I heard that, but I didn't hear Mr. Teitelbaum's answer.

MR. TEITELBAUM: I said I will do it, that's all.

THE COURT: He said he would do it; that is right.

Do you know the paragraph number, Mr. Casey, or the section, which he refers to?

MR. CASEY: I do not, sir.

Q. May I see that one you have got in your pocket? I will have it marked, so I can ask you about it—the most recent constitution that you have.

A. I thought you said that (indicating) was the exhibit.

Q. May I see the one you have?

A. Well, since this is not part of the exhibit, why should you have it? If you want to ask the Court for me to admit it as an exhibit, it will be fine.

THE COURT: Mr. Casey, is this the last constitution that we have here in front of us?

MR. CASEY: I think it was amended twice. This is the one I have, Exhibit 6 that the Government placed in evidence, is the one that was amended October 15, 1951.

THE WITNESS: It is my recollection it was amended in 1953 and 1956.

MR. TEITELBAUM: That is the most recent one, I believe. And that is why I asked to see that, because I believe I can pick the section out in question. And Mr. Moreschi's testimony was they had never substantially changed the make-up of the District Councils.

BY MR. CASEY:

Q. Mr. Stirone, I ask you to give it to Mr. Teitelbaum, so he may have it marked as an exhibit.

A. If I may be permitted, though, I would like to make this announcement. Between counsel, you agreed to substitute this constitution (indicating) for the yellow ones or red ones.

MR. TEITELBAUM: Mr. Stirone is quite correct. We did, and then Mr. Casey and his associates were kind enough to furnish me a copy of the constitution that was in force in 1951. Therefore we put in the 1951 constitution.

THE COURT: Is this the one you want to look it up?

MR. TEITELBAUM: Yes.

THE COURT: Can you find what you want in there?

MR. TEITELBAUM: I either will do it quickly or else I will go off and leave the subject, —I obviously can't.

BY MR. TEITELBAUM:

Q. Mr. Stirone, must all Locals belong to a District Council, if there is a District Council?

A. They must belong to that District Council, sir, if that Council has the complete jurisdiction elected to it. At that particular time—so the record be kept straight, sir— the Pittsburgh Laborers' District Council only had jurisdiction of building construction work.

Q. I see, sir. Did you—when you came to Pittsburgh did you contact the local District Council?

A. Yes, sir.

Q. Did you work with them?

A. Yes, sir.

Q. You also contacted, I believe, the Trade Unions —the Trade Unions Council?

A. Yes, sir.

Q. And you weren't able to get along—get much cooperation from them. Is that correct?

A. Sir, I got the kind of cooperation that you usually get where you have seventeen organizations, each trying to get some little piece of work. And I recognized at that time, since the industry was unorganized, that there was not room enough for all the craft unions, and therefore, since I couldn't get the assistance of the primary trades, I had to go about doing the next best thing.

Q. Now, did you testify on direct testimony that you were authorized to visit all Locals in the area and to unify work?

A. I did not testify that I was authorized to visit all Locals in the area.

Q. What was your testimony about, concerning your visiting?

A. My authorization from the home office was to visit the Local Unions in the city of Pittsburgh for the purposes of making a survey and with the intention of establishing or organizing the heavy construction work. That I did, sir. And all local building laborers' unions decided that it would be better for me to organize a separate union.

Q. When did you get authority to go beyond Pittsburgh?

A. Only by written assignment from the general president of the home office.

Q. Now, did you ever get an assignment from the general president at the International office to go up to Johnstown and take over the control of the union that Mr. Russell was heading up there?

MR. CASEY: Objected to, as cross examination on a collateral matter.

THE COURT: Objection overruled.

A. Sir, I faintly remember that there was a fracas in Johnstown, in which a committee from Johnstown—

Q. Please. My question can easily be answered yes or no. Did Mr. Moreschi ever give you authority to go up there and take over that Local?

A. I don't remember; but I can get the record, if it is your desire.

Q. You don't remember whether he did or not. Were you present in court when Mr. Moreschi said he never gave you such authority?

MR. CASEY: Objected to, as not proper cross examination.

THE COURT: Objection overruled.

A. Sir, I was present; and I didn't quite clearly understand the Mumbo Jumbo that was going on.

Q. I see. You couldn't quite understand Mr. Moreschi and what he was saying. Is that correct?

A. No; I couldn't quite understand you.

Q. Oh, I see. But did you go up and take over the treasury and books of Mr. Russell's Local Union?

A. No, sir.

MR. CASEY: Just a moment, please. That is objected to, as not proper cross examination and cross examination upon collateral matters.

THE COURT: Mr. Casey, I am overruling the objection.

MR. CASEY: The objection is on the record. That is all I want.

Q. I am not sure that I heard your answer, sir.

A. Ask the question again, please.

THE COURT: Wait. We will have the reporter read the answer.

(Last question and answer read.)

Q. Did you attempt to?

A. Not that I can remember, sir.

MR. CASEY: Just a moment, please. Now, my recollection, and from my recollection, what this man now says Mr. Moreschi testified to, that I objected when he posed the question and was sustained at that time. That is just what he is trying to do now.

MR. TEITELBAUM: That isn't my recollection.

MR. CASEY: Well, it is mine. You said it was yours. It was mine.

MR. TEITELBAUM: However, the Court has already ruled on this.

THE COURT: I have made my ruling.

MR. CASEY: Well, if the Court please, if I am correct, if it is kept out on direct examination of Mr. Moreschi for the reasons I gave at that time, certainly it is no more competent or material or relevant here now. It is just another man attempting to put the matter in the same way. And I submit to you that in examination of this man on direct examination—

THE COURT: The other witness wasn't very clear on this proposition, as I recall it.

MR. TEITELBAUM: Mr. Moreschi said that nobody could go up—I am saying my recollection—that no person could go up and take over another Local Union unless they were authorized by him. And I asked him if he ever authorized this—

MR. CASEY: You asked Mr. Stirone if he ever took over the other Union, and he said no.

THE WITNESS: Well, I don't remember attempting to.

THE COURT: Well, that answers it. He didn't take it over.

Q. Did Mr. Russell ever work under any advice you had to give, as a general representative of the International?

A. No.

MR. CASEY: Just a moment. Objected to, as not proper cross examination. I am sorry, sir,—after the answers are in. I think a man has no right to answer questions that are collateral. I want my objection upon the record.

Q. Did you answer the question?

A. Repeat it, please.

THE COURT: He answered no.

BY THE COURT:

Q. Is that correct?

A. I would like, Your Honor, for the reporter to read it back, please.

THE COURT: All right. Mrs. Thomas, would you read the witness's answer, please?

(Last question and answer read.)

Q. Now then, I asked you, Mr. Stirone, whether Mr. Russell ever worked under or with your advice and assistance, as a general representative of the International, while he was in Johnstown.

MR. CASEY: Objected to, as not cross examination, and cross examination upon a collateral matter.

THE COURT: The objection is overruled. Will you please answer the question, Mr. Stirone?

A. The question is, did Mr. Russell ever work under my advice?

Q. Or with your advice.

A. Or with my advice. The best answer I can give you is that Mr. Russell worked under nobody's advice but his own.

Q. Now, we were told, I believe, that you decided, when you couldn't get the cooperation that you felt the situation demanded from the Building Trades Council, that you just went out and organized the supply industry in connection with heavy construction. Is that right?

A. Sir, I made no mention that I didn't get the cooperation from the Building Trades Council and then went out and organized the supply industry.

Q. Rather than get into that,—did you go out and organize the supply industry?

A. Yes, sir, I did.

Q. And what is in the supply industry?

A. The supply industry within the jurisdiction elected to it by Local 1058 is the supply yards in Allegheny County, which would mean the building supply yards, the ready mix concrete yards, the sand and gravel yards, the concrete pipe manufacturers, the concrete block manufacturers, and the lumber yards, all within Allegheny County and probably here and there one company bordering on the County line.

Q. Are they still in 1058?

A. Yes, sir.

Q. Would that include the Duquesne Slag Company's yards down here on Brady Street?

A. I believe the Duquesne Slag Company's yard came in sometime in the middle "forties".

Q. But they have employees who are members of your Union?

A. They have employees that are members of Local 1058.

Q. Now, in 1943 you ceased to be an International—a general representative of the International Union. Is that correct?

A. Yes, sir; or thereabouts.

Q. Now, it was at that time, in 1943, that your Union had a conflict with the International. Is that correct?

A. In 1943 or '44—

Q. Please, sir, just answer me.

A. Well, I am trying to set the correct time.

Q. All right.

A. To give you an honest answer, sir.

Q. That is fine. That is exactly what I want.

A. I believe in 1944 is when there was a fracas—or maybe that is not the correct word. In 1944, approximately, the International Union saw fit to file charges against our Local Union.

Q. They wanted back your charter and books and records, didn't they?

MR. CASEY: That is objected to, as not cross examination and as cross examination on a collateral matter.

THE COURT: Objection overruled.

A. Sir, they did not want the books, and they did not want the treasury, and they did not want the charter back.

Q. What was the lawsuit? Didn't Mr. Moreschi file a lawsuit against you?

A. No, sir.

MR. CASEY: Just a moment, please. If the Court please, in order to save myself getting up each time, I would ask that I have a continuing objection to this line of questioning, as to matters which are not in the direct examination and, in my opinion, not germane to this issue.

THE COURT: Whenever you want to object you better put your objection on the record, Mr. Casey.

MR. CASEY: All right. I object to this question.

THE COURT: Objection overruled.

A. Will you restate the question again, please?

Q. Did Mr. Moreschi file a lawsuit against you at that time? And your Union.

A. Mr. Moreschi did not file a lawsuit against me.

Q. I added "and your Union".

A. And my Union.

Q. There was no lawsuit filed?

A. Not by the International Union.

Q. Was there a lawsuit filed by a man by the name of Ross Adams at that time?

MR. CASEY: Objected to, for the same reason.

THE COURT: Objection overruled.

A. *Against whom?*

MR. CASEY: If the Court please, the answer by the witness there seems to me to be irrefutable proof that the questions are not cross examination, because otherwise they would be known in the direct examination and there would be no question as to how it was done.

THE COURT: Mr. Casey, I have overruled your objection.

Q. Against Nicholas Stirone, also known as Nick Stirone, George Dellenbaugh, John Dunbar, Thomas Pecora, Frank Shmelevski, also known as Frank Chemel, George Brickell, as officers and individuals, and Local No. 1058, International Hod Carriers, Building, and Common Laborers Union of America, affiliated with the American Federation of Labor, in the Court of Common Pleas of Allegheny County, Pennsylvania.

A. There was.

Q. Now, was it after that lawsuit that your dispute arose with Mr. Moreschi?

MR. CASEY: Now, wait a minute. If the Court please, I object to the question, as not being cross examination. If it is after the filing of the lawsuit, the disposition of the lawsuit, I don't know; and he doesn't ask him.

MR. TEITELBAUM: I asked, filed.

THE COURT: Objection overruled.

A. Will you state your question again, sir?

Q. Did Mr. Moreschi's action take place after this lawsuit was filed?

MR. CASEY: I though we were talking about Ross Adams.

A. I am trying to follow him, Mr. Casey.

Q. Well, just answer my questions, and you will be better off.

MR. CASEY: Now, if the Court please,—

MR. TEITELBAUM: I am sorry. That was an improper comment, Your Honor.

THE COURT: Just a moment, Mr. Stirone. What did you say, Mr. Teitelbaum?

MR. TEITELBAUM: I said, "Don't try to follow him. Just answer my questions."

MR. CASEY: You said, "You would be better off."

MR. TEITELBAUM: I said, "You would be better off." And I said I shouldn't have said, "You would be better off."

THE COURT: There is so much colloquy here, then we lose track of the question. Now, what was your last question?

MR. TEITELBAUM: I asked him whether Mr. Moreschi's action, which he has testified to previously, took place after this lawsuit was filed.

BY THE COURT:

Q. Now, can you answer that question, Mr. Stirone?

A. I believe, sir, that there arose a constitutional question after that suit was filed. That suit was filed, I believe, in 1944. I think the Court of Common Pleas threw Mr. Ross Adams out three times running.

BY MR. TEITELBAUM:

Q. That doesn't answer my question very well. What I want to know is, did Mr. Moreschi want you to come down to see him at the International office to discuss what was alleged in that lawsuit?

MR. CASEY: Objected to, as not cross examination.

THE COURT: Objection overruled.

A. If the District Attorney is desirous of getting the record verbatim on that particular case, I shall be pleased to furnish it to this Court and to the District Attorney.

Q. I just want an answer to the question.

A. I can't remember word for word what you are trying to get at.

Q. I just want to know what Mr. Moreschi wanted to see you about.

MR. CASEY: Just a minute. That is objected to, as not cross examination. Ask Mr. Moreschi.

MR. TEITELBAUM: I did ask Mr. Moreschi. Now I want to know whether Mr. Stirone remembers what he wanted to see him about.

MR. CASEY: If the Court please, I submit to this Court that he can't test this witness's credibility upon collateral matters.

THE COURT: I have overruled your objection, Mr. Casey.

A. Repeat it again, sir.

Q. What were the charges? What did Mr. Moreschi want you to come to International Headquarters to talk about?

A. That, sir, had to do with the reinstatement of Mr. Ross Adams.

Q. And did you refuse to go to see Mr. Moreschi?

A. I did not—

MR. CASEY: Just a moment. Objected to, as not cross examination.

THE COURT: Objection overruled.

A. I did not refuse, sir. As a matter of fact, I went to Washington and spoke before the General Execu-

tive Board of our International Union.

Q. Was that before or after the Local was certain sanctions were imposed on Local 1058 by the International?

MR. CASEY: Objected to, as posing a question which is not in the evidence, and as not cross examination.

MR. TEITELBAUM: I think it was in the record, Mr. Moreschi said they sent an International vice president here.

MR. CASEY: He didn't say anything about sanctions.

THE COURT: I can't recall anything about sanctions.

MR. TEITELBAUM: It is a sanction if an International vice president was called in here to act as a trustee for a certain period of probation. That is a sanction.

MR. CASEY: I have no objection to Mr Teitelbaum taking the stand as a labor expert and saying whatever he wants about it, but I do object to it now, until he is sworn at least.

THE COURT: I sustain the objection to the question in that particular form.

Q. At that time what happened to Local 1058, as result of this dispute between the International and you?

MR. CASEY: Objected to, as not proper cross examination.

THE COURT: I will overrule the objection.

A. Repeat the question again, sir.

MR. TEITELBAUM (to reporter): Would you read the question, please?

Q. (Last question read.)

MR. CASEY: Now, if the Court please, I said in order to avoid just what occurred now, I want to have a continuing objection to this line of

questioning, and you said I must object each time.

THE COURT: All right. I will give you a continuing objection to this particular line of cross examination.

Q. (Question again read.)

A. What happened—Repeat that again, please, so I can digest it properly.

Q. (Question again read.)

A. As far as I can recall, the officers of 1058 were suspended because of an action taken by the General Executive Board of the International Union.

Q. Why?

A. Because that particular time the International Union requested that the officers of 1058 go to Chicago to answer formal charges presented by the general president, and the Local Union took the position that because of the war they would prefer to go to Washington, D. C.

Q. What were the charges, Mr. Stirone?

A. That I don't remember, sir.

Q. You don't remember what charges were brought against you?

A. Sir, I want to repeat myself, I would be pleased to get you the formal record.

Q. I just want to know if you remember. I am just testing your memory, sir. Do you remember?

A. Not in toto.

Q. All right. In part, what the charges were?

A. The charges were, if I can remember correctly, that because of our refusal to go to the city of Chicago to attend that Board meeting we stood suspended as officers of that Union.

Q. I am trying to find out why they wanted you to go to the Board meeting. What did they want you to answer there?

A. To answer charges they were going to present

before the Board. And we didn't have a copy of the formal charges.

Q. You never found out what they were?

A. I don't think it was necessary to find out because the whole matter was adjudicated within a short period of time.

Q. You went to court and asked for an injunction against Moreschi, didn't you?

A. Our Local Union saw fit to go to the Court of Common Pleas to seek redress for what they considered an unjust act on the part of the International Union.

Q. An International Union official was sent into Pittsburgh at that time—

A. Not at that time; not at that time, sir.

Q. Prior to the final disposition of your dispute was an International official sent in here?

A. The International official was sent in here, I believe a matter of a couple of months before the court—before the matter was brought to the Court of Common Pleas.

Q. But after you had been suspended. Is that correct? I am talking about Mr. Echeson.

A. Mr. Echeson was here prior to the suspension.

Q. And did you cooperate with Mr. Echeson and give him the books and records, or let him examine them?

A. We gave Mr. Echeson, by consent agreement, everything that he asked for.

Q. I see. And was Ross Adams ever let back in the Union?

A. Ross Adams was given every ample opportunity within the constitution to come back into the Union.

Q. Why did you throw Ross Adams out of 1058?

A. For your information, we never threw—

Q. For the jury's information.

A. Well, you will excuse me. You are asking the question, therefore I was directing my answer towards you.

Q. That is all right.

A. I want you to know, sir,—

Q. Well, all right. I just want you to answer the question, please.

A. We never threw Ross Adams out of that Union. He suspended himself through nonpayment of dues.

Q. Would you take his dues?

A. Yes, sir.

Q. And then he filed a suit to get back in the Union, didn't he?

A. Sir, he filed a suit with deliberate intent, after being afforded the opportunity of reinstating himself in the Union in accordance with a decision made by the General Executive Board of our International Union, he failed to avail himself of the time limitations given to him by that Executive Board.

Q. Did he file suit, trying to get back into 1058?

A. After that he filed a suit, with full intentions—with malice aforethought, is maybe the best word I can use

Q. Against whom?

A. Against the Local Union and its officers.

Q. Any particular officers?

A. All the officers.

Q. You saw the lawsuit, didn't you? You saw the papers that were filed against you?

A. Yes, indeed, I saw them.

Q. And he made various allegations against you personally, didn't he?

A. He made so many allegations that the Court of Common Pleas laughed him out of court.

Q. Was he subsequently allowed back into the Hod Carriers Union?

A. He subsequently never made application to our Union.

Q. Do you know whether he ever was subsequently

permitted to enter another Local Union of the Hod Carriers?

A. That I don't know.

Q. You never heard anything about it?

A. Sir, I believe, if my memory serves me right, that during that fracas with 1058 and the International Union he attempted and probably was accepted in Local 178 of the Demolition and Scrap Metal Workers.

Q. You know he got into Local 178, don't you?

A. You asked me the question, I am trying to give it to you as honestly as I can.

Q. Now, it was about the time this all arose that you ceased being an employee of the International, wasn't it?

A. I ceased being an employee of the International, I believe, between '43 and '44.

Q. Now, was this the cause of the termination of your employment by the International?

A. That I don't know, sir. You would have to ask Mr. Joseph E. Moreschi. He was my employer, and he is the one to determine whether or not he wanted me in his employ.

Q. He never told you why he didn't want you in his employ any more?

A. No, sir.

Q. He just said you were finished?

A. He just said he didn't need my services.

Q. And that was about the time you and he were fighting, and the lawsuit, and so on and so forth?

MR. CASEY: Fighting over what?

MR. TEITELBAUM: This dispute that was going on. I think everybody knows what I mean.

MR. CASEY: I don't. I am included in "everybody". I object to the "and so on and so forth".

MR. TEITELBAUM: All right. I will delete the "and so forth".

Q. Was this about the same time that the officers of Local 1058 were suspended by the International that your employment with the International ceased?

A. I believe, sir, that it was prior to that time.

Q. Which was prior? I don't know which was first.

A. My services being terminated by Mr. Moreschi I believe were prior to the fracas—or the dispute, as you want to call it, anything you want—between 1058 and the International president.

MR. CASEY: May I suggest at this time, in view of the fact Mr. Teitelbaum sees fit to stand over here, and the man asking the questions, it is usual to look at him. Will you direct your answers to the jury, Mr. Stirone?

MR. TEITELBAUM: All right. I will go back.

Q. And then sometime in 1937—in 1947, excuse me—you again became an employee of the International on a part time basis?

A. I believe so.

Q. And at that time, in 1947, the Laborers' District Council of Western Pennsylvania was reorganized and enlarged. Is that correct?

A. Yes, sir.

Q. And how many counties were within its jurisdiction then?

A. When it was reorganized it was elected a territorial jurisdiction of thirty-three counties.

Q. And 1058 was among them?

A. 1058 was among them.

Q. And you had again become an International employee on a part time basis?

A. I am trying to establish, sir, whether I became an International employee after the formation and reorganization of the Council or at that same time or before. I believe that I became employed by the International Union around '48 or—about '48, or thereabouts, sir.

Q. And in your position as the head of the local District Council did you come to know Jake Kassab?

A. Sir, I knew Jake Kassab, or I have known Jake Kassab approximately ten or more years.

Q. Does Mr. Kassab—he is the vice president in charge of Ragnar Benson here in Pittsburgh, isn't he?

A. When I first knew Jacob Kassab he was not the vice president of Ragnar Benson.

Q. What was he?

A. I don't know—well, there was a time, sir, when Jacob Kassab was a member of one of our Unions in the central part of Pennsylvania.

Q. But in 1951 was he the vice president in charge of the local district, that is, for Ragnar Benson?

A. In 1951 he was the vice president of Ragnar Benson.

Q. Now, what business is Ragnar Benson in?

A. Ragnar Benson is in the building construction.

Q. Heavy construction?

A. No. He is in the building construction.

Q. Does he employ any common laborers?

A. He employs members of the building laborer's unions.

Q. Does he employ any members of 1058?

A. Not that I know of.

Q. Has he at any time employed people who are in 1058?

A. Well, sir,—

MR. CASEY: If the Court please,—

Q. If you know.

MR. CASEY: I suggest I don't know how many there are in 1058 or how many employees Ragnar Benson has. And I think that is an unfair question to ask this man under the guise of cross examination.

MR. TEITELBAUM: He can answer that he

doesn't know. It is easier to answer than when somebody takes a blood test.

MR. CASEY: Certainly he can, but I think it is unfair to ask him. Maybe it is five thousand. And with the turnover you don't know where they end up.

A. I believe I can clarify it for the benefit of the jury, if not for the benefit—

MR. CASEY: I understand you said it is easier to answer than when somebody takes a blood test. And that recalls to my mind that when I asked that question the objection was sustained.

Q. Mr. Stirone, can you answer the question?

MR. CASEY: I object to it, as being unfair.

THE COURT: Objection overruled.

Q. Just if you know or not.

A. I want the jury to know the truth, and I am going to try to give it.

Q. Let's do it the legal way. You answer my question.

MR. CASEY: I object to argument to the witness. Whether it is legal or not, it remains for the jury to determine.

THE COURT: Just a minute, Mr. Casey. There has been some question put to the witness if any of the members of Local 1058 are employed by Ragnar Benson.

BY THE COURT:

Q. Do you know, Mr. Stirone, or don't you?

A. Your Honor, as far as I know, there is no way that a member of Local 1058 would ever have jurisdiction on building construction to transfer out of 1058.

Q. Then he would not be a member of 1058?

A. That is right.

BY MR. TEITELBAUM:

Q. Was Ragnar Benson one of the groups that

would contract with the Heavy Engineering Council, of which you were the president?

A. No, sir.

Q. They were not. Now, Mr. Stirone, when you first met—around the end of August, when you first met Mr. Dierker, you have given a specific date. What is that date, in relation to the Rider proposition?

A. I believe I testified this morning or yesterday, whichever it was, that I first had occasion to discuss this matter with Mr. Dierker, I believe on the afternoon of August the twenty—August the 27th.

Q. And where was that?

A. That was in the Carlton House.

Q. And do you recall what the circumstances were that you met him? Didn't you say you were having lunch there and he was there?

A. Well, sir, I think I testified sometime during this proceeding that the Carlton House was somewhat of a meeting place for people who are interested in the construction industry, and we happened to meet. And I believe—if I repeat myself—the conversation turned to who was the low bidder on the Pittsburgh Steel Company plant.

Q. And did Mr. Dierker at that time know who the low bidder on the Pittsburgh Steel plant was?

A. I don't know that Mr. Dierker knew, but I did.

Q. You knew hat because—

A. Yes, I did. On August 27th I did. And so did anyone who was in the trade.

Q. Well, Mr. Dierker was in the trade, wasn't he?

A. Well, he would have to answer that for himself.

Q. But you knew?

A. I knew.

Q. And did you tell Mr. Dierker at that time—now, think about it—did you say to Mr. Dierker at the time you first met him that you knew that Rider Supply

Company had a contract to deliver ready mix concrete for that job?

A. Sir, I want you to understand I didn't even know Rider Supply Company.

Q. Now, just answer my question.

A. No, of course not; I never said it.

Q. Your answer is no?

A. Very definitely no.

Q. All right. And did Mr. Dierker mention to you anything about Rider Supply Company then on that day?

A. On that day, during the course of the conversation we talked about that particular operation, and he then explained that his company was going to set up a crushing plant there and that they expected to have a Mr. Rider do the batching work at that plant on a lease basis, and that he was interested very much.

Q. Did he tell you that they were going to have Mr. Rider to be a tenant and they were going to build a crushing plant, and not that they had anything there at the time?

A. Oh, I don't know that he went into that great detail; but he did say he expected Rider to be a tenant—or was a tenant, I don't remember.

Q. You don't remember whether he said he was a tenant or was going to be a tenant. Is that right?

A. Well, sir, if you are here to expect me to remember everybody, I should have had a recording machine.

Q. You remembered it good about everybody this morning. I am asking you to repeat. Do you remember whether he said Rider was going to be a tenant or already was a tenant?

MR. CASEY: I object to the line of questioning.

THE COURT: Objection overruled.

MR. CASEY: If the Court please,—

A. May I ask this question—no, I will not ask this question. I better answer your question. If my memory serves me right—if my memory serves me right, the gist of the conversation then was that Rider was going to be the tenant.

Q. You don't remember whether he said he already was?

A. He may. I am not certain. My recollection—

Q. Now, did Mr. Dierker say to you, Mr. Stirone, "I want to find myself a good tenant for this place up there for when I am going to have a crushing plant"? Is that what he told you? Did he ever tell you that?

A. I don't think he used the phrase that he wanted to find a good tenant.

Q. And was Mr. Rider going to be the tenant of the crushing plant?

A. Mr. Rider was not going to be the tenant of the crushing plant. Mr. Rider, as I understood it, or I understand it now, was going to be the tenant to handle the batching of the ready mix concrete.

Q. So Mr. Dierker then spoke to you about this contract. Is that right?

A. Mr. Dierker at that time said that he was interested, because Rider was very anxious to get this contract and since he was going to be, or was, the tenant for the Duquesne Slag Products, he certainly felt that everything should be done.

Q. Mr. Stirone, did he ever tell you that he was interested in getting that contract?

A. Who?

Q. Dierker.

A. That he was interested in getting it for himself personally?

Q. No; that he was interested in getting it for Rider, because he wanted to sell slag to Rider?

A. Well, it would seem, sir, that his interest would stem from the fact that in getting Rider the contract—

Q. Not what it would seem. Did he or didn't he tell you that?

A. I believe that he did say that.

Q. He told you that he was interested in seeing Rider get the contract, so he could sell him slag. Is that right?

A. Well, I don't know that he was specific on the basis that you are.

Q. Did he say that Rider was afraid somebody else was going to take the contract?

A. Why, I believe Mr. Dierker said that Rider was fearful that somebody else might get the contract.

Q. Did he mention the Dravo Company or the Charleroi Supply Company?

A. I don't remember whether he did or not, sir.

Q. Did you ever hear Mr. Dierker say to you that Mr. Rider was afraid that the Charleroi Supply Company will get the contract, "and I am afraid that Dravo"—Dravo, who owns the Charleroi Supply Company—"will sell the ready mix concrete, and not me"?

MR CASEY: Objected to, as three questions in one.

THE COURT: Well, that is right; there are three questions in one. And you can separate them between now and tomorrow morning.

MR. TEITELBAUM: All right, sir.

THE COURT: We will recess until ten o'clock tomorrow morning.

(Whereupon, at 4:20 p.m. on Wednesday, June 12, 1957, a recess was taken until Thursday, June 13, 1957, at 10:00 a.m.)

MORNING SESSION

June 13, 1957. 10:00 a.m.

NICHOLAS A STIRONE resumed the stand.

Cross Examination (Cont'd) by Mr. Teitelbaum:

A Mr. Teitelbaum, I would like to say something if I may.

MR. TEITELBAUM: If it please the Court, I don't know what the defendant wants to say but I think he ought to answer questions.

MR. CASEY: He just said he had something to say.

MR. TEITELBAUM: I don't think that is proper, Mr. Casey.

MR. CASEY: I do, so we are at odds.

MR. TEITELBAUM: Let's see what the judge says.

THE COURT: Mr. Casey, ordinarily if there's anything you wish to bring out, you do it by proper questions.

MR. CASEY: I have nothing to bring out. The witness has said I have something I wish to say That's all I hear. I don't know any more.

MR. TEITELBAUM: I just said it wasn't proper. I asked the judge to rule on it, and now you are discussing it.

MR. CASEY: I didn't hear that part, about the judge ruling.

MR. TEITELBAUM: That's what I did. You are discussing it and you don't know what it is. We'll let it up to the judge.

THE COURT: You may bring it out later if there's anything you want brought out.

MR. CASEY: If the Court please, the witness has just said to Mr. Teitelbaum, there's something I'd like to say. I don't know what,—

MR. TEITELBAUM: I don't know what you are doing. I mean, that isn't proper—

MR. CASEY: I am trying to find out what you are doing.

THE COURT: We will sustain Mr. Teitelbaum's objection and you may propound your questions, Mr. Teitelbaum.

MR. CASEY: Do I understand the witness is not permitted to make a statement at this time?

THE COURT: No.

Q. Now, yesterday when you were on the stand, Mr. Stirone, you told us that in 1937 and 1938, outside of your activities as an International employee and then as president of Local 1058 and some dealings in the stock market, that you couldn't recall having any other business, trade, profession or calling, is that correct?

A. Yes, sir.

MR. CASEY: Objected to as one of the same objections that was thrown at me at many times. Six questions thrown in one and not a proper question on cross examination.

THE COURT: The witness has already answered the question so we will overrule the objection but there are several questions in that question, Mr. Teitelbaum.

MR. TEITELBAUM: Yes, sir. I was just trying to summarize what we had yesterday, is all.

MR. CASEY: That's all I was trying to do many times and the Court sustained the objection.

THE COURT: I can only take up one matter at a time.

MR. TEITELBAUM: Shall I repeat it?

THE COURT: It's already been answered.

Q. Now, sir, after 1938 and down to now, have you been engaged in any other business activities or callings?

A. Sir, I can't quite remember all of the activities that I may have been engaged in so it would be pretty hard for me to tell you from '38 to '57 the things that I may have done or not done.

Q. Well, sir, were you ever engaged in dairyfarming?

MR. CASEY: Objected to as immaterial.

THE COURT: Objection overruled.

A. Was I engaged in dairy farming?

Q. Yes.

A. Myself personally.

Q. Did you own a dairy farm in that period?

A. I did not own a dairy farm.

Q. Did you own a farm?

MR. CASEY: Objected to as not cross examination.

THE COURT: Objection overruled.

A. I did not own a dairy farm.

Q. A farm, I said, sir.

A. Mr. Teitelbaum, would you please have the question read, so that I can be sure.

THE COURT: Will you read the question?

Q. (Question read.)

A. Sir, I did not own a farm. Mrs. Stirone owned a farm.

Q. When did Mrs. Stirone buy that farm, if you know?

MR. CASEY: Objected to as not cross examination.

THE COURT: Objection sustained.

Q. Did Mrs. Stirone pay for that farm or did you?

MR. CASEY: Objected to as not cross examination.

THE COURT: That objection is sustained.

Q. Who paid for the farm when it was acquired?

MR. CASEY: Objected to as not cross examination.

MR. TEITELBAUM: Sir, I think it's proper to ask this man if he bought a piece of property and put it in somebody else's name. I remember in the interrogation of Mrs. Rider, there was lots more questions asked than that and it seems to me that Mr. Casey felt they were quite proper. This is not going anywheres near that far. I am just asking a relevant question. Did this man—

MR. CASEY: That's your opinion.

MR. TEITELBAUM: Of course, everything I say is in my opinion, Mr. Casey. Did this man pay for a farm which was put in somebody else's name; that's all I am asking.

MR. CASEY: If the Court please, just what he says now makes it irrelevant and immaterial. What difference does that make as far as the trial of the indictment at this criminal number here? It's not proper cross examination.

MR. TEITELBAUM: It seemed to make a lot of difference when Mr and Mrs. Rider were on the stand.

MR. CASEY: Wherein does it attack his credibility one iota? Wherein is it material in this issue?

MR. TEITELBAUM: It seems to me if somebody bought property—

MR. CASEY: I object to it.

THE COURT: The objection is overruled.

Q. Will you answer the question?

A. Will you repeat it?

Q. Did you pay for that property up near Bedford?

A. Sir, as far as I can recall, I don't remember. It's just like asking me if I had breakfast 20 years ago and what I had for breakfast.

Q. As to whether you paid for a piece of property in Bedford?

A. I don't remember, sir.

Q. When were you divorced, sir?
A. I believe it was in 1948.
Q. You don't remember the date in 1948?
A. No, I don't remember the date.
Q. When did you marry your present wife?
A. I believe in 1949.
Q. Do you remember the date?
A. May 23rd.
Q. Do you remember where you got married?
A. Cumberland, Maryland.
Q. Now, sir, at that time when you got married in 1939 or 1949, did Mrs. Stirone, the present Mrs. Stirone already have that piece of property in Bedford?
A. As far as I remember, sir, I believe the farm was owned by she and her father.
Q. Prior to the time that you married her?
A. Yes, sir.

MR. CASEY: Do I understand in line with this question, the Government is going to undertake as Mr. Teitelbaum said a few minutes ago that this farm property was purchased by Mr. Stirone and put in his wife's name? That's what he said here.

MR. TEITELBAUM: Mr. Stirone said he couldn't remember.

MR. CASEY: I am charging you with cross examination—

THE COURT: Just a minute.

MR. CASEY: If the Court please, I'd like to put this upon the record. The cross examination of collateral and immaterial matters for the purpose of contradicting this witness without any thought on the part of the United States Attorney's mind to contradict him or to attempt to contradict him, I say he has no such right unless he tells this Court and jury now that he proposes to show what he said a few minutes ago, to wit, this man used his money to buy a piece of property and put it in his wife's name.

THE COURT: You have made your record. Now proceed with the question.

MR. CASEY: May I ask the Court to inquire of the United States Attorney whether or not he proposes to prove in line with his questioning here, the facts which he stated to this jury and the Court a few minutes ago?

MR. TEITELBAUM: I don't think I have to make an offer of any kind in cross examination.

MR. CASEY: I am asking the Court.

THE COURT: I will reserve decision on that. Proceed with your questioning.

Q. What is the Ruston Company?

A. The Ruston Company, sir, is—

MR. CASEY: Just a minute. Objected to as immaterial and not proper examination.

THE COURT: Objection overruled.

A. The Ruston Company, sir, is the result of a partnership formed in 1944, I believe, then dissolved and is now a sole proprietorship owned by me.

Q. What does the Ruston Company do?

A. The Ruston Company keeps a record of things that I do in the nature of legitimate business in order that I satisfy the Bureau of Internal Revenue with a proper record of what business that I do.

Q. What kind of business do you do, Mr. Stirone?

A. That could be anything within the legal category of the Constitution of the United States.

Q. You don't know what kind of business the Ruston Company does?

A. Sir, The Ruston Company is not limited as a fictitious trade name.

Q. I am not asking you that. I am asking you what it does.

MR. CASEY: I object to the counsel arguing with the witness.

MR. TEITELBAUM: I am not arguing with him at all.

THE COURT: I don't consider that to be an argument, Mr. Casey.

MR. CASEY: I take it then I am overruled?

THE COURT: You are overruled.

A. Will you please rephrase your question or tell me the question?

Q. What does the Ruston Company do?

A. Mr. Teitelbaum, The Ruston Company does anything within the Constitutional provision allocated to an American Citizen.

Q. What has it done, Mr. Stirone?

A. It has done a multiple number of things of which I can not give you an exact detailed picture of each item that is done.

Q. Does it buy and rent equipment?

A. Yes, sir.

Q. Heavy construction equipment?

A. Yes, sir.

Q. To whom does it rent it?

A. It rents it to the contractors or those of them who wish to rent it.

MR. CASEY: If the Court please, I object to this line of questioning as having no probative value, being not proper cross examination, it has no relevance on the issue here involved.

THE COURT: Defendant's objection is overruled.

A. May I, sir—I want to make a correction to that statement.

Q. Oh sure, I want you to make corrections.

A. In order that the record be kept straight.

Q. Just make your correction.

A. I believe that the Ruston Company had in its books, there are records of two pieces of equipment which

were originally owned by Mrs. Stirone. I just wanted to get that correction because if my memory serves me right, that was the only two machines that were owned by that company that was engaged in the heavy construction industry.

Q. After you got married, Mrs. Stirone gave the equipment to you, is that right?

A. Mrs. Stirone never transferred title to those machines to me.

Q. Didn't you tell me you were the sole owner of the Ruston Corporation—Ruston Company?

A. That is very true but we have submitted join. tax accounts, joint tax figures and therefore it would make her as much an owner of that company as I am.

Q. I see. Did you one time rent a shovel to Perini Brothers when they were digging the Squirrel Hill Tubes?

MR. CASEY: If the Court please, I object to that as not cross examination and having no probative value, cross examination on a collateral matter and the type of matter upon which the Government could not have produced evidence in its case in chief.

THE COURT: The objection is overruled.

Q. Would you please restate your question?

A. Did you rent a shovel to Perini Brothers when they were digging a tunnel under Squirrel Hill in the Parkway?

A. That shovel was rented, sir, by Mrs. A. E. Stirone through a company that she owned prior to my marriage.

Q. That had nothing to do with the Ruston Company?

A. No, it did not at that time have anything to do with the Ruston Company.

Q. When was that shovel bought?

A. I believe, sir, around 1948 sometime.

Q. Did you handle the rental for Mrs. Stirone to Perinis or did she deal with them herself?

MR. CASEY: Objected to as not proper cross examination.

THE COURT: Objection is overruled.

A. Would you please restate the question?

THE COURT: Will you read the question?

Q. (Question read.)

A. Sir, if my memory serves me right, that rental was paid directly to Mrs. Stirone or her assignee.

Q. I asked you who negotiated with Perini Brothers, you or her?

MR. CASEY: Objected to as not proper cross examination.

THE COURT: Objection overruled.

A. Sir, if my memory serves me right, I believe that Mrs. Stirone herself and I believe I may have been with her at that time.

Q. Do you know what the rental was on the shovel?

MR. CASEY: Objected to as not proper cross examination.

THE COURT: Just a moment. I didn't quite hear that question.

MR. TEITELBAUM: I asked him, sir, if he knew what the rental was on the shovel.

THE COURT: The objection is overruled.

A. I believe, sir, the rental was $2,000 a month.

Q. You had a contract for two years of the rental?

A. Sir—

MR. CASEY: Objected to as not proper cross examination.

THE COURT: Objection is overruled.

A. Sir, I did not have any rental contract. That rental contract was with somebody else.

Q. Was there a rental contract?

MR. CASEY: Objected to as not cross examination.

THE COURT: Objection overruled.

A. I don't remember, sir, whether there was or not.

Q. Do you remember with whom the contract was?

MR. CASEY: Objected to as not cross examination.

THE COURT: Objection overruled.

A. That I don't remember as to who the individual was the contract was made with.

Q. Who got the $2,000 a month?

MR. CASEY: Objected to as not proper cross examination.

THE COURT: Objection overruled.

A. Certainly not I.

Q. Do you know who got it?

A. I don't remember.

MR. CASEY: Just a minute until I get my objection in. Objected to as not cross examination.

THE COURT: Objection is overruled.

Q. Did you include the income from that shovel in the joint income tax return?

MR. CASEY: Objected to as not proper cross examination.

Q. For the year in which the rental was received?

THE COURT: Objection overruled.

MR. CASEY: Just a moment. I include in my objection the latter part of the question.

THE COURT: You do what, Mr. Casey?

MR. CASEY: I said I included—I objected before he was finished with the question. I want to have my objection cover the latter part of his question also.

THE COURT: That objection will be sustained.

Q. Did you include the income from that shovel on your books and records of your personal income or your

wife's income, your joint incomes or of the Ruston Company?

MR. CASEY: Objected to as not proper cross examination.

THE COURT: I will sustain the objection to that.

Q. How much did you pay for the shovel—how much did the shovel cost when it was bought, do you know that?

MR. CASEY: Objected to as not proper cross examination. It has no probative value.

THE COURT: Objection overruled.

A. I did not buy the shovel, sir.

Q. You don't know what it cost?

A. I wouldn't want to hazard a guess.

Q. You have been in this business for some years. Do shovels of that type ever cost over $20,000?

MR. CASEY: Objected to as not cross examination.

THE COURT: Objection overruled.

A. Sir, shovels can cost from $5,000 to half a million dollars.

Q. I am talking about that shovel.

A. Sir, I did not buy that shovel. Therefore I wouldn't know the price.

Q. But would a shovel of that type ever cost over $20,000?

MR. CASEY: Objected to as calling for a conclusion.

MR. TEITELBAUM: I am talking of the type of shovel it was at the time it was bought.

MR. CASEY: Objected to as calling for a conclusion on the part of the witness.

THE COURT: Better first ask him if he knows.

Q. Do you know, sir?

MR. CASEY: Objected to as not having been properly qualified.

THE COURT: That objection is overruled.

A. Will you please repeat your question, sir?

Q. Do you know what a shovel of the type that was rented to Perini Brothers would have cost at the time that shovel was bought?

A. Sir, in trying to answer that question I would have to know many varied trade makes of that type of shovel because the prices vary and therefore I am unable to give you the exact price of the shovel.

THE COURT: All right, he doesn't know so that precludes any further inquiry about the price of that shovel.

Q. Mr. Stirone, during the period—did you ever act as middle man to get any contract for any other contractor for a commission?

MR. CASEY: Objected to as not cross examination.

THE COURT: Objection overruled.

Q. Other than Rider did you ever act as a middle man to get a commission from any other contractor for getting him a contract?

A. In so far as any type of contract on the basis of Rider—

MR. CASEY: Just a moment, I object to that as calling for a conclusion in the use of the word "middleman".

MR. TEITELBAUM: I think he knows what a middleman is.

MR. CASEY: I think I don't, so I am objecting to it and say it is not proper cross examination and has no right in this case. The matter upon the Government's case is carried upon the books as a sales and commission and bonus. I don't see the word "middleman"—that is only this gentleman's opinion as to what is involved.

THE COURT: I will sustain the objection in so far as the form of the question is concerned.

Q. During the period from 1937 when you came to Pittsburgh until now, did you ever get a commission from any other contractor to get him a contract for work as a sub-contractor or as a prime contractor?

A. Truthfully, sir, I don't remember excepting that the commission obtained from the Rider contract is the only one of its kind.

Q. Thank you, sir. Did you ever during the time from 1938 until the present time receive from or ask any sub-contractor or prime contractor to give you money for any reason or pay money to you for any reason?

MR. CASEY: Objected to as not cross examination.

THE COURT: He has already testified he has not engaged in any similar transactions such as the Rider transactions with any other contractor.

MR. TEITELBAUM: Now I am asking the further question, did you ever ask them to pay him any money for any reason, either sub-contractor or prime contractor.

MR. CASEY: If the Court please—

THE COURT: Objection is sustained to that.

Q. Mr. Stirone, did you ever ask any contractor to pay you money, a sum of money to help him in labor difficulties?

MR. CASEY: Objected to as not proper cross examination. Objected to further as a violation of the Act of 1911.

MR. TEITELBAUM: Violation of the Act of 1911? That doesn't apply in Federal Court.

THE COURT: That's true, it doesn't. That's a Pennsylvania act. Objection overruled in so far as that question is concerned.

A. Mr. Teitelbaum—

MR. CASEY: Just a moment, please. I further object upon the basis that under the questioning that it would tend to ask this witness whether he had committed a crime not connected with the one on trial here.

MR. TEITELBAUM: I don't know that that's a crime. I don't think it is.

THE COURT: Of course, that raises a serious question.

MR. TEITELBAUM: If the Court please, the man has told us he is a labor consultant. I just want to know if that is part of his labor consultant—

THE COURT: That isn't the way you phrase your question. I will sustain the objection at this time to the form of the question.

Q. Did you ever act as a labor consultant, advisor or employee or receive compensation as such from any contractor or any person engaged in the business from 1937 until the present time?

MR. CASEY: That's objected to for the same reason. As this man well knows that under the Taft-Hartley law, there is a certain employer-employee-union relationship and it's one matter that is involved. I object to it.

MR. TEITELBAUM: First of all, the Taft Hartley Act has certain limited applications. There are certain conditions that must be present before the Taft-Hartley law is involved.

MR. CASEY: If this gentleman will eliminate those conditions, I will withdraw my objection.

MR. TEITELBAUM: I don't know. I want to ask him if he ever received money for acting as a labor- if he ever rendered any services to any contractor for which he received pay is what I am asking.

MR. CASEY: That could include any contractor who had employees who were members of his union to which he was a negotiator, so if he is willing to take that out of the question, I will withdraw my objection.

MR. TEITELBAUM: I will see if I can reword it to take care of Mr. Casey's objection. That's what I was getting at.

MR. CASEY: You don't need to worry about Mr. Casey. Mr. Casey will try and take care of himself, as far as the record.

THE COURT: I am sure each of you can take care of themselves.

MR. CASEY: If the judge please, he directed his comments to me.

MR. TEITELBAUM: I directed them to the Court.

THE COURT: He was looking at me though.

Q. Mr. Stirone, at any time did you ask for and receive money for services from a contractor or a sub-contractor at a time when you and he were not engaged in any labor difficulties but he may have had difficulties with some other union and he wanted your assistance?

MR. CASEY: Objected to for the same reason.

MR. TEITELBAUM: Now, I don't know what the objection is to that.

MR. CASEY: Will you please have it read to Mr. Teitelbaum?

MR. TEITELBAUM: Well, the judge remembers what the objection was.

THE COURT: I will sustain that as to the form of the question.

Q. Did you ever prior to the passage of the Taft-Hartley Act ask or accept from an employer money from a contractor or sub-contractor, money for services rendered in connection with labor matters?

MR. CASEY: Objected to.

THE COURT: Not involving members of his union. That was in the last question. Objection overruled.

Q. Not involving members of your union, yes, sir.

A. Not that I can remember, sir.

Q. Have you at any time since the passage of the Taft-Hartley Act accepted money from a contractor for your services in connection with a labor dispute in a matter not involving any employee whom you represented as a labor representative?

MR. CASEY: Objected to.

THE COURT: Objection overruled.

A. Not that I can remember, sir.

Q. Do you know Mr. Max Harrison?

MR. CASEY: Objected to as immaterial and not part of the—anything brought out on cross examination.

Q. Did you ever receive any money from Mr. Max Harrison for—

MR. CASEY: Objected to.

Q. For assisting him in a labor problem?

THE COURT: Let's get your question on the record and then let Mr. Casey put his objection in. The objection was interposed before you were through with your question. Now repeat your question and before you answer, Mr. Stirone, let Mr. Casey have an opportunity to object.

Q. Did you ever accept money from Mr. Max Harrison for assisting him in a labor problem?

MR. CASEY: That is objected to.

Q. Of course, not connected in any manner with any employee whom he represented? —whom you represented as a labor representative?

THE COURT: Objection overruled.

A. Not that I can remember, sir.

Q. We were talking as we left yesterday about the meeting in the cocktail lounge in the Carlton on August 27th? That's when you met Mr. Dierker over there, August 27th, 1951?

A. Yes, sir.

Q. And then subsequent to that meeting on the 29th you testified that you and Mr. Rider and Mr. Dierker met together?

A. Yes, sir.

Q. Is that correct? I was inquiring as to whether or not Mr. Dierker had indicated to you—

THE COURT: Mr. Teitelbaum, I was wondering if you would stand just about there so Mr. Casey could move over just a little bit.

MR. CASEY: Mr. Teitelbaum has intentions of standing directly in front of me.

THE COURT: I know we don't want to bar you, Mr. Casey.

MR. CASEY: I don't mean to be disrespectful.

MR. TEITELBAUM: Now, you can see just as well over there.

MR. CASEY: I did not, sir. You sit down there and I'll stand in your place. I defy you to see whether I can see well or not.

THE COURT: Suppose you stand there and Mr. Casey can sit back there.

MR. CASEY: The only reason I desire to sit here is because he is blocking my view.

THE COURT: That is all right. Now we have covered this matter. Proceed with your questioning.

MR. CASEY: I am trying to see.

THE COURT: Now, Mr. Teitelbaum, please do not stand in front of Mr. Casey.

MR. TEITELBAUM: Well, he is restricting my movements. I am of a nervous disposition, Judge, and I like to walk up and down.

MR. CASEY: It seems to be frustration instead of nervousness.

THE COURT: Mr. Casey, that remark was entirely unnecessary and I direct it be stricken from the record and the jury disregard it.

MR. CASEY: If the Court please—

THE COURT: Sit down and—

MR. CASEY: I move that the remark about him being nervous be stricken from the record.

THE COURT: That should be stricken from the record too.

Q. Mr. Stirone, at that meeting, did Mr. Dierker tell you that he was concerned because he wanted to get a tenant for his place out there in Belle Vernon?

A. At the meeting in Mr. Dierker's office, sir, there was no mention made by Mr. Dierker of that at all.

Q. How about at the Carlton House, at the cocktail lounge?

A. That may have been said in the general course of conversation but at the meeting that you referred to, Mr. Dierker sat there silently.

Q. I am now referring to the meeting at the Carlton House, sir. I want to get at that point.

A. But you started your question, sir, with the meeting at Mr. Dierker's office.

Q. All right.

A. I therefore wanted to c[illegible]y it so that an erroneous impression would not be created.

Q. We don't want to create any erroneous impressions, you made that clear. Now, at any other meeting—

MR. CASEY: These side remarks about making it clear, it's not clear to me.

MR. TEITELBAUM: I am trying to make it clear to the Court and jury, Mr. Casey. You can take care of yourself.

Q. Mr. Stirone, at a meeting in the Carlton House on the 27th or at the meeting on the 29th or at any other time, did Mr. Dierker tell you that he was concerned, because he wanted to obtain Rider as a tenant at the location of his crushing plant out in Belle Vernon?

A. Sir, Mr. Dierker didn't express a concern. He said that Mr. Rider would love to have that contract.

Q. Then he was talking for Mr. Rider, was he, and not for himself?

MR. CASEY: That is objected to as not cross examination. I presume that the man would say to that, who he was talking for would be Mr. Dierker.

MR. TEITELBAUM: Now, I think this is an important point because of the various statements that Mr. Stirone made on his direct testimony and therefore I want to find out now whether Mr. Dierker said I am concerned. I want to have a good tenant for this batching plant or whether his interest was that Rider would get the contract. That's what I am asking.

MR. CASEY: I have no objection to that.

THE COURT: You have no objection to that?

MR. CASEY: No, I have no objection to that, but you didn't say that.

MR. TEITELBAUM: Well now, let's answer it that way.

Q. In your conversation with Mr. Dierker, did he say to you that he was concerned because he wanted a good tenant for the property out there in Belle Vernon that he had leased or did he say that he wanted to get the contract for Rider?

MR. CASEY: Objected to as three questions in one. It can not be answered—

MR. TEITELBAUM: It's only one question.

THE COURT: Mr. Teitelbaum, you can rephrase that question. Ask him one thing at a time.

Q. Did Mr. Dierker say to you that he wanted to get a good tenant for his batching plant in Belle Vernon?

A. Mr. Dierker —

Q. Just — go ahead answer it.

A. I will talk when you get through.

Q. I am through. You go ahead. Answer my question now.

MR. CASEY: If the Court please, I object to any colloquy between the lawyer and the witness.

MR. TEITELBAUM: I am having a tough time, judge.

MR. CASEY: I have got to find some place where I can hear. You talk low and I don't hear you. Is there any objection if I sit here?

THE COURT: No, we have no objection whatsoever. You sit right down there. Maybe you can keep your voice up.

Q. Will you answer my question, Mr. Stirone?

A. Will you please restate your question, sir?

Q. Did Mr. Dierker on either the 27th or the 29th indicate to you that he was concerned about this contract because he wanted to get a good tenant on his property out in Belle Vernon that he had leased from the Pittsburgh Steel?

A. He didn't put it that way, sir. He said that Mr. Rider was very much interested in getting that contract.

Q. And sir, did he mention the Charleroi Supply Company at that time or any other time to you?

A. No, I don't believe that he at that time mentioned the Charleroi Supply.

Q. Did you ever hear — did Mr. Dierker ever tell you that Rider was afraid that Charleroi Supply Company would get the contract instead of him?

A. He may or may not have said it. I couldn't remember verbatin every word that you are trying to get me to put in here.

Q. This first meeting that was over at the Carlton on the 27th of August of 1951, is that correct?

A. Yes, sir.

Q. You didn't meet with Mr. Dierker by prearrangement, just happened to be there?

A. I believe, sir, that I testified yesterday —

Q. Just answer the question again, sir.

A. I'd like to clarify it for the jury, a truthful answer. I can't certainly give you a yes or a no.

THE COURT: Mr. Stirone, you go ahead and answer the question again then.

A. Sir, I testified yesterday that the Carlton House was a sort of general meeting place for people in the trade.

Q. All I want to know —

A. I want to tell you how I met him. You asked that question.

Q. All I want you to do —

THE COURT: Let him answer the question. If he wants to repeat that, let him repeat it.

A. It was a general meeting place —

MR. CASEY: It isn't a question of repeating. The examiner asked him a question. He has a right to explain it.

THE COURT: He's answered it, Mr. Casey, and I am going to let him answer it in his own way.

A. That was a general meeting place for a lot of people in the trade and we met there, sometimes I met with people in that Carlton House by arrangement and sometimes we just happened to meet by accident.

Q. Now, with Mr. Dierker was it by arrangement or by accident?

A. I don't quite recall at this moment whether it was by accident or whether it was by design.

Q. Then you met with Rider on August 29th at ten o'clock in the morning, is that right?

A. Yes, sir.

Q. On what day was it that you phoned Mr. Kassab about this?

A. Probably the same day or the following day.

Q. Then did you go to see Mr. Kassab or did you discuss it on the phone first?

A. I may have seen him or I may have talked to him or I may probably have done both.

Q. Did you ask him to give this contract to Rider as a personal favor to you?

A. Yes, sir.

Q. Had you ever prior to that asked Mr. Kassab or any other contractor to give a contract to any particular sub-contractor as a personal favor to you?

MR. CASEY: Objected to as not proper cross examination.

THE COURT: I think perhaps that objection is sustained.

Q. After you and Mr. Rider you say reached an agreement that was all right, you never saw Rider again until you saw him one day over in some tailor shop, is that right?

A. Yes, sir.

Q. But you did talk to him on the telephone?

A. I believe I testified yesterday, sir, that sometime in November of 1951, I spoke to him for the first time, I believe, and after that I tried to get him a few times but didn't have very much success.

Q. Did you leave messages with his wife?

A. Oh yes, I left messages with his wife all right but he never called back.

Q. Did you ever talk to his wife about it instead of just leaving a message?

A. No, I never discussed any business with his wife, excepting to ask her to please, the least he could do was answer a call.

Q. Where did that first check, where did you get that first check?

A. Sir, that first check was mailed to me.

Q. Where did it come to?

A. It came to 1506 Bigelow Apartments.

Q. That was on what date?

A. Sir, there's a notation on the exhibit made on my behalf, in my handwriting showing it was received on March the 3rd, deposited on March 4th, paid March 5th.

Q. 1951?

A. 1952.

Q. Or 1952, yes. Mr. Stirone, where were you living on March 3rd, 1952?

A. Sir, I believe that I was in error a moment ago. Now that my memory is refreshed I was living at 5260 Centre Avenue and that's where the check was mailed and I want to further add that I moved to the Bigelow I believe in the month of May, 1952.

Q. Did Mr. Rider know where you lived?

A. Yes, sir.

Q. How did he know where you lived?

A. Because I gave him the address which I spoke to him in Mr. Dierker's office.

Q. Did you call him up or write him a letter and tell him where you moved?

A. No, I did not, sir.

Q. Well now, you remember you got a second check. How did he know where to send that?

MR. CASEY: I understand that this question to be at the time he moved whether he told him? I object. It's unintelligible.

MR. TEITELBAUM: I want to know how Mr. Rider knew where to mail the second check.

MR. CASEY: Ask him that.

MR. TEITELBAUM: That's what I did ask him. How did he know where you lived?

MR. CASEY: You did not. You said that —

MR. TEITELBAUM: I don't want to argue with you.

Q. How did Mr. Rider know where to send the second check?

A. I believe, sir, word was left at his office.

Q. On one of your phones there?

A. Probably, sir.

Q. Where was your office in 1952, in March of 1952?

A. 5 Court Place.

Q. On what floor?

A. Third floor.

Q. How do you get up to the third floor?

A. You get up to the third floor by walking up two flights of stairs.

Q. At your outer door is there a place where you can look out to see who is outside or was there at that time?

A. I assure, you, sir, at the outer door there was a big door, as big as this one, that you walk into and then there is an anteroom and in that anteroom, sir, there are four windows, not slats, four windows. There is a door to the left, or rather a door to the right and a door directly in front of you. You enter that door and you enter the business agent's room and then you enter another door and you enter into my room.

Q. You have a private office there?

A. I don't know how private you call it. It's open to everyone.

Q. It was your office?

A. It's presumed to by my office.

Q. Then sometime after your meeting with Mr. Kassab, you say that Mr. Kassab called you on the phone and said that he wanted to know if Mr. Rider could do the job, is that right?

A. Sir, that phone call —

MR. CASEY: Just a moment, I object to that.

The District Attorney knows, I think the word was used was service the job in direct examination.

MR. TEITELBAUM: Oh well —

MR. CASEY: Oh what well.

THE COURT: Just a moment, Mr. Casey

MR. CASEY: The Government attorney —

THE COURT: Just a minute, we're not going to have any more of this. I direct both of you to observe the proper courtroom decorum.

MR. CASEY: I am willing to accede to that.

MR. TEITELBAUM: Now, Mr. Stirone —

THE COURT: Will you repeat the question, Mr. Teitelbaum?

Q. Did you testify that Mr. Kassab called you on the phone relative to Mr. Rider's ability to carry out the sub-contract? I don't pretend to be quoting. Was there a call of that nature?

A. I believe, sir, that either he called me or we met within a matter of a couple of days from the conference had at Mr. Dierker's office where Mr. Rider met me and agreed to this business transaction.

Q. Did Mr. Kassab at that time — did you then investigate through Mr. Dierker to find out about it from Mr. Kassab, is that what you say?

MR. CASEY: Objected to as improper. I can't follow him myself and I am sitting close. Four questions. He changed in the middle of it. I wouldn't know what to answer to it. I object to it as not intelligible.

THE COURT: Will you read the question? (Question read.)

THE COURT: Will you rephrase your question, Mr. Teitelbaum?

Q. Did you then contact Mr. Dierker? Did you testify — excuse me. I will withdraw what I said prior to this point. Did you testify that you then saw Mr.

Dierker and inquired of him relative to Mr. Rider's ability to satisfactorily perform the contract to deliver the ready-mixed concrete?

MR. CASEY: Objected to as not cross examination, whether he testified or not —

THE COURT: The objection is overruled.

A. I believe, sir, that I testified that I called Mr. Dierker to make inquiry as to whether or not he could find out whether Mr. Rider could service this contract.

Q. Did you subsequently call Mr. Kassab again on that subject?

A. I subsequently either called or spoke to Mr. Kassab in person, assuring him that he could service the contract.

Q. How much time intervened while you were finding that out between the time Mr. Kassab called you and you were able to find out from Mr. Dierker?

A. Sir, it was no more than a matter of four or five days, beginning with the 29th, I believe it was no more than three to five days when the whole thing was agreed to and assured.

Q. After you assured Mr. Kassab of that did Mr. Kassab say to you as a personal favor to you, Nick, I will give him the contract?

A. I don't know that he put it in those words, sir. He said, "Well, Nick, if you say he can do the job, that's all right. The next thing is whether or not we can agree on the proper price." That's when I said to him, "Well now, if the price is not right, then it's up to use your judgment as to whether you want to give it to him or not."

Q. That occurred to him the second time you talked to Kassab, not at the time you originally talked to him?

A. Sir, that may have been spoken of on two occasions, both the first time and the second time.

Q. Did you phone Mr. Rider and tell him O.K., Bill, you are getting the contract?

A. Sir, I believe that I told Mr. Dierker that everything was all right and that he'd have the contract.

Q. You never called Mr. Rider, and told Mr. Rider you say employed him — you never called him and told him that he was awarded this contract?

A. Sir, I believe there was a close friendship between Mr. Dierker and Mr. Rider and since Mr. Dierker was the means of introducing us, I let Mr. Dierker have the information and Mr Dierker tell Mr. Rider.

Q. But you did not tell Mr. Rider at any time?

A. Well, sir, I am not presumed — I hope I am not presumed to remember verbatim everything you want me to remember.

Q. I just want you to answer whether you ever told Mr. Rider that he got the contract before he found out about it from other sources?

A. I may have told him.

Q. Do you remember whether you did or not?

A. I said I may. I don't want to perjure myself, sir.

Q. And after your meeting of the 29th, the next time you talked to Mr. Rider was sometime in November, you told us, is that right?

A. Sir, I believe I have answered that question for you three or four times. How many more times do you want me to answer it?

Q. Just now please.

THE COURT: Answer the question, Mr. Stirone.

A. I believe I talked to Mr. Rider by phone in November.

Q. Mr. Stirone, you have a filing system whereby you save letters and envelopes that the letters come in, don't you?

MR. CASEY: Objected to as not cross examination.

THE COURT: Objection overruled.

A. Will you please restate your question?

Q. Do you have a filing system whereby you preserve letters that are written to you and the envelope or container they are contained in?

A. I have some files that I keep what I would consider important letters to me but however in the main, I do not keep the envelope that they come in because it makes the file entirely too bulky unless there is a specific reason for keeping it.

Q. Was there a specific reason for keeping some of these envelopes on these checks from Mrs. Rider and these statements from Mrs. Rider?

A. Sir—.

MR. CASEY: If the Court please, I would ask that the counsel for the Government show the man the exhibits?

A. Will you restate your question?

Q. Was there any reason to keep the envelope in that case?

A. Yes, sir, there was a very, very good and specific reason for keeping this envelope. I would like to have the jury to know, sir—

Q. Just answer my question.

MR. CASEY: Leave the man alone, will you please, in his answers?

MR. TEITELBAUM: Your Honor—

MR. CASEY: The man is attempting to answer the question and he is standing here in front of him baiting him.

MR. TEITELBAUM: If the Court please, I am trying to get an answer to my question.

MR. CASEY: You are not—

THE COURT: Wait a minute, Mr. Casey.

MR. CASEY: Why Mr. Casey?

THE COURT: Wait a minute.

MR. CASEY: I can't talk, is that it?

THE COURT: Just a moment. Will you please repeat your question so there is no misunderstanding about it?

Q. I asked him if there was a reason for keeping the envelope. All I want is an answer.

THE COURT: You answer that question, Mr. Stirone.

MR. TEITELBAUM: I think it can be answered yes or no. Then if he wants to explain I will not restrict him from doing it.

MR. CASEY: If the Court please, he has answered the question. He said there is a good and sufficient reason.

MR. TEITELBAUM: All right.

THE COURT: You gentlemen interrupted.

MR. TEITELBAUM: I didn't.

THE COURT: I didn't catch the answer.

MR. CASEY: I didn't interrupt, Mr. Teitelbaum did.

THE COURT: Just a moment now, Mr. Casey. Would you answer it again for me, Mr. Stirone?

A. If your Honor please, I would like to say the good and sufficient reason for keeping this envelope was because the Internal Revenue Department keeps a very close scrutiny on me and the check received was dated for December 31st, 1953 and I received it on January 4th and included it on my income of 1954 and I wanted to have some proof.

Q. So that ordinarily you do not save envelopes unless they have a purpose, is that right?

A. Sir, I don't believe you will find another envelope there.

Q. I have not so stated, I asked you a question.

MR. CASEY: I object to the form of the question, he just having answered it.

THE COURT: Yes, the question has been answered.

Q. You then began to get a series of checks and I think the last one was received in 1953, December, 1953, is that right?

A. Yes, sir. The last one was not received in December of 1953, please, correction. The last one was received on January the 6th, 1954.

Q. All right. During the period of time that you were inquiring as to —you were wondering as to why Mr. Rider wasn't making any payments you told us you went and asked Mr. Kassab about it, is that right?

A. I don't believe I said that.

Q. Didn't you ask Mr. Kassab whether Mr. Rider had started to make his deliveries of concrete or not and whether they paid him or not?

A. I believe, sir, that was sometime in November that I did have occasion to ask Mr. Kassab.

Q. At that time you told Mr. Kassab for the first time that you were receiving a commission on that order, is that your testimony?

A. Yes, sir.

Q. Was Mr. Kassab surprised or angry or anything else when he heard you had gotten a commission?

MR. CASEY: Objected to, Mr. Kassab can answer that.

THE COURT: I think you can reword your question. Rephrase your question. I will sustain the objection to it in the present form.

Q. Did Mr. Kassab say anything to you indicating that he was surprised that you or angry that you had taken a commission?

MR. CASEY: Objected to as not cross examination, hearsay.

MR. TEITELBAUM: I haven't asked him for any hearsay to prove the purpose thereof but to prove

the state of mind when he first heard a thing like this.

THE COURT: Objection overruled.

A. Would you please restate your question, sir?

Q. Would you read the question, please? (Question read.)

A. Sir, I don't recall that Mr. Kassab had anything to say nor do I have a photographic mind to remember what his face looked like at the moment.

Q. So that you had no impression at that time, you in your own mind had no impression that he was either surprised or angry?

MR. CASEY: Objected to as not cross examination.

THE COURT: Objection overruled.

A. I didn't say that he was surprised or not surprised, sir.

Q. I am asking you. Do you have any impression as to whether he was or not?

A. I don't know whether he was or was not.

Q. At the time that you got the last check that you got which was that check No. 14 on the bank in Belle Vernon and you had received your final statement, the last statement that you got from Rider as to the delivery of concrete, at that time did you ask either Mr. Kassab or Mr. Dierker whether any cement was delivered after that time?

MR. CASEY: If the Court please, I am lost. In the third part of it. I object to the form of the question as being unintelligible.

MR. TEITELBAUM: I will rephrase it, sir.

THE COURT: All right, you will withdraw the question and rephrase it.

Q Yes. After you received the Check No. 14 on the bank in Belle Vernon and the last statement from Riders as to the delivery of concrete, did you inquire of either Mr. Dierker or Mr. Kassab as to whether any more concrete was delivered?

A. No, I did not, sir.

Q. Did you ever inquire as to Mr. Dierker or Mr. Kassab as to the total amount of ready-mixed concrete delivered by Riders?

A. No, I accepted the statements in good faith of the Rider Supply Company.

Q. Now, Mr. Stirone, you tell us that in September of 1951, you went to an A. F. of L. convention in San Francisco?

A. Yes, sir.

Q. On what date did you tell us you left for San Francisco?

A. I believe, sir, that the testimony given was on the 9th of September.

Q. Mr. Stirone, I ask you to examine what has been marked as Defense Exhibits H 1 and H 2 and to read to me what date that airplane left?

MR. CASEY: Objected to. The exhibit speaks for itself

MR. TEITELBAUM: Yes, Your Honor. Thank you, he is right. I will take it.

THE COURT: All right, read it to the jury.

MR. TEITELBAUM: (To the jury) Departure date is September 10 of 1951.

A. Let the record speak for itself.

MR. TEITELBAUM: That's right.

Q. Now, Mr. Stirone, you said in your testimony, I believe, that on the day that you got back you got back late in the evening, is that right? That's why you didn't go to the office that day?

A. I said I may have gotten back late in the evening.

Q. That was the reason you didn't go to the office, is that right?

A. Yes, sir.

MR. TEITELBAUM: If it please the Court, I refer again to Defendant's Exhibit H, which shows

arrival time in Pittsburgh at 1:25 p.m. Eastern Daylight Savings Time.

MR. CASEY: Now, if the Court please, I do not care to cast aspersions upon the timeliness of the T.W.A., being a T.W.A. ambassador but I do know that an arrival date is just some little evidence as to what time the plane actually arrives or actually leaves.

THE COURT: I think we have all had enough experience with airplanes to understand that, Mr. Casey.

MR. TEITELBAUM: I just read what Mr. Casey put in evidence.

THE COURT: All right, it's in evidence.

Q. At the time you left for there, your address was 5260 Centre Avenue in Pittsburgh, Pennsylvania, is that correct?

A. Yes, sir.

Q. Do you recall the name of that apartment house?

A. Coronado Apartment House.

Q. Will you speak up a little bit?

A. The Coronado.

MR. CASEY: I heard it back here.

THE COURT: Mr. Casey, now wait a minute.

MR. TEITELBAUM: I haven't said a word, Your Honor.

MR. CASEY: But your arm is going, I can see it.

THE COURT: Just a minute. You both have been waving your arms a little bit this morning, so let's sit down and be calm.

MR. CASEY: If the Court please, sitting at the far end with the fans going at the far end of the counsel table and Mr. Teitelbaum being directly in front of the witness, I heard him say Coronado over here and I charge that the District Attorney was

trying to unduly emphasize certain parts of the testimony not in good faith unless his hearing is bad. If that is so—

THE COURT: I am sure your hearing and his hearing are both adequate. Proceed with your questioning.

Q. And the purpose of that trip was to attend a convention of some sort in New Orleans.

MR. CASEY: Objected to as not a question of some sort. Objected to as not being proper.

Q. Your purpose was to attend a convention in New Orleans, is that correct?

MR. CASEY: Objected to, unless I am off on the wrong time here now. I thought this was September.

A. Did the Court rule?

THE COURT: I was listening to the objection of counsel.

MR. CASEY: If the Court please, I thought this was a September date. It might be in error.

THE COURT: What date is it?

MR. TEITELBAUM: I am talking about this September date when he said he went to New Orleans with this convention.

MR. CASEY: He did not say that. He said it was February, February 28th, 1952.

Q. At the time that you departed on September 10th, where were you going, sir?

A. I believe, sir, that the evidence introduced in my behalf speaks for itself. I went to San Francisco, California.

Q. That's right, but you were going to a convention, is that right?

A. Convention of the American Federation of Labor and the Building and Construction Trades Department as an observor for the Laborers' District Council of Western Pennsylvania.

Q. You and your wife's transportation was paid to San Francisco for that purpose by the union, is that right?

A. For your information—

MR. CASEY: Objected to as immaterial and not cross examination. What has that got to do with it?

THE COURT: The objection is overruled.

A. For your information—

MR. CASEY: If the Court please, I would like to argue my objection.

I think it is of no materiality in this or any other case as to—the issue is whether or not he went to California. The burden of proof is upon—since alibi is alleged here on the part of the defense, the burden of proving only by the preponderance of the evidence as a proper defense. In so far as that testimony is concerned, in line with that defense it has no probative value, it does not tend to destroy the credibility of the witness whether, who paid it, whether you did it or I did it or Mr. Teitelbaum.

THE COURT: Mr. Casey, it is my recollection he testified in direct examination the union paid his expenses to go out there.

MR. CASEY: No, no, there was a check introduced which shows a check payable from the union to the T.W.A. for three hundred and some dollars dated August 29th, 1951. That's all I can recall about it. It's in evidence.

MR. TEITELBAUM: Your Honor, I want to know what it was for, that's all.

MR. CASEY: Ask T.W.A.

THE COURT: I have overruled your objection, Mr. Casey, so sit down and suppose you stay sitting there too, Mr. Teitelbaum.

Q. Is that correct that you and your wife, that check was to pay for your wife's fare and your own? That is

Defendant's Exhibit I to San Francisco?

A. Well, to be honest with you, sir, I don't—since this goes back to 1951, I don't remember honestly whether it's for transportation of just myself round trip or whether it included both, but however you can determine that. I presume you have.

Q. Mr. Stirone, what were the dates of the convention?

A. The dates of the convention, sir, the exact length I believe the Building Trades Construction Department convention started on the 12th and following that I believe the American Federation of Labor convention started on the 17th. Now the record can be gotten if it satisfies you.

Q. We know that. When did it end, Mr. Stirone?

A. I am not certain, sir.

Q. Did you stay until it was over?

A. I don't believe I did.

Q. You left on the 20th or the 19th, excuse me. You left California on the 19th, is that right?

MR. CASEY: If the Court please—

A. The exhibit will show for itself.

MR. CASEY: It all depends on whether he's going on Pacific Standard Time, Eastern Standard Time. I have no objection if he would say what time.

THE COURT: All right, we will find out.

MR. CASEY: The record shows what time a limousine was to leave.

Q. Mr. Stirone, it'd be the 19th or 20th, depending on the time you left then, is that right?

A. I believe the exhibit will show when I left.

Q. You don't remember?

A. Read for yourself.

Q. I asked you whether you remembered. Do you remember?

A. You have it in your hand, sir. Why trouble me with—

BY THE COURT:

Q. Mr. Stirone, do you or don't you remember when you left?

A. I believe, sir, I left on the 20th.

Q. That was then two or three days after the convention started, is that correct, it started on the 17th?

A. I presume that to be right.

Q. Didn't the convention continue through the 25th?

A. Since I was not there, sir, I couldn't swear that that's when it finished.

Q. So you did not observe the whole convention?

A. I did not, sir, the whole convention.

MR. CASEY: If the Court please, he just got through saying that in a previous answer.

MR. TEITELBAUM: If it please the Court, I'd like to read from the defense exhibit H which shows departure date of September 19th.

MR. CASEY: It shows departure date September 19th Pacific Standard Time and if it is Eastern Daylight Savings Time, that's all I am trying to find out.

THE COURT: Let me see that? There's only three hours' difference in time. —It's hard for me to make out.

Q. Was it in the morning or afternoon when you took the plane out of San Francisco?

A. If my memory serves me right, sir, it was, I believe, after ten o'clock at night.

Q. After ten o'clock at night?

A. That's right.

Q. During the period of time that you were in San Francisco, did you operate on Daylight, Eastern Standard Time or Pacific Time?

A. That I wouldn't remember, sir.

Q. In the trade and knowing affairs up and down the Valley as you do or did, did you never hear of the fact that Mr. Rider went bankrupt until fall of 1955?

A. That is the truth, sir.

Q. Mr. Stirone, when you were calling on the phone to Riders, did you know that you were talking to Mrs. Rider when you were trying to get Mr. Rider on the phone, do you know you were talking to her?

A. Not for a long time, sir.

Q. Did you subsequently find out you were talking to Mrs. Rider?

A. I believe she made it known that she had become Mrs. Jeanne Rider.

Q. Had become Mrs. Jeanne Rider?

A. That's right.

Q. Did you ever know her before she was Mrs. Jeanne Rider?

A. No, never met her in my life.

Q. You had never met Rider until August 29th, is that correct?

A. That's right.

Q. She told you she had become Mrs. Jeanne Rider?

A. That is what she said.

Q. All right, now, after you found out it was Mrs. Jeanne Rider, did you ask her about the checks?

A. No, sir, I did not.

Q. Why not?

A. Because I didn't have any business transactions with her.

Q. You saw that she signed the checks, didn't you?

A. That made no difference to me, sir, who signed the checks.

Q. You only were going to talk about this to Mr. Rider, is that correct?

A. Well now when you say "this" what do you mean?

Q. This transaction, you only desired to talk about it to Mr. Rider, is that correct?

A. Sir, for your information I made the transaction with Mr. Rider and I wasn't about to beef to Mrs. Rider.

Q. I have nothing further, sir.

(Change of reporters.)

[*Chronologically this should immediately precede the second row of asterisks at 215a and should immediately follow the last answer preceding that row of asterisks.*]

Q. Mr. Dierker, did you ever go with Mr. Stirone to the plant at Belle Vernon and there meet Mr. William G. Rider, at which time Mr. Stirone demanded fifty cents a cubic yard for the concrete, otherwise he would see that he didn't—that Rider didn't keep the contract with Ragnar Benson, or wouldn't see that he had no labor trouble?

A. No, sir; I am very definitely positive; not at any time there with him. I was with Mr. Stirone one time at our Monessen plant. I indicated one day that we had just completed the plant. As I said, we had quite a time, and we put our plant together in parts—we put a partial plant, and tore that down—and when the steel came in put the final plant in. I recall telling him that the plant had been completely erected and was one of the finest in the district, and we were rather proud of it. And I said "Would you like to see the plant?". And he said yes. Well, we opened the plant on May 10, I believe, in 1952. I recall being there with him for this reason: Because our plant is about ninety feet high, and we have an open grille staircase running up the side of the plant. And he was a little timid, walking up, looking down ninety feet. We stood looking, and he said, "Is this Rider's batching plant?" I said, "Yes. That's the bin here. Then up there the two cement bins and the two batch bins."

Q. And that was after the plant was fully completed?

A. That was right—Well, on May 10 we started operation, actually May 10, of the new plant. They were down about two months. And he says, "Is that Rider's office?" I said, "Yes, in that little—his office is in that portable office there." He says, "I think before I go I would like to say hello to him." And he arranged—or we arranged it, and Mr. Rider wasn't there. I believe that is the only time that he was in Belle Vernon.

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MORNING SESSION

June 17, 1957
9:30 a.m.

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SUR REBUTTAL

ALBERT L. BUNCHER, a witness in behalf of the defendant, having been duly sworn, testified as follows:

Direct Examination

BY MR. CASEY:

Q. What is your name?
A. Albert L. Buncher.
Q. Where do you live?
A. 1317 Murray.
Q. How long have you lived there? Is that in the City of Pittsburgh?
A. That's in the City of Pittsburgh.
Q. How long have you lived in and about the City of Pittsburgh?
A. All my life with the exception of four years.

MR. PALETTA: After you finish identifying, we'd like to have an offer of this witness.

Q. What is your business or occupation?

A. I am engaged in the iron and steel business and in the industrial development.

Q. Where is your place of business?

A. Our general offices are at 835 Shore Avenue.

Q. That's in Pittsburgh?

A. Yes.

Q. North Side?

A. That's correct.

Q. How long have you been in business there?

A. At the same location, at this location since approximately 1945, but the business has been in existence since 1913.

Q. In 1952 what sort of business were you in and where was the general office?

A. In the present location.

AT SIDE BAR

MR. TEITELBAUM: If the Court please, I object to Mr. Fuss being present at counsel table if he is going to be in the case. Otherwise he has no business at Side Bar.

MR. CASEY: Suppose you direct your attention to Mr. Fuss. Mr. Fuss, Mr. Teitelbaum questions your right to be here. He says you have no right at Side Bar unless your matters are explained to defendant.

MR. TEITELBAUM: And you are representing defendant?

MR. S. L. FUSS: I do not represent the defendant.

MR. TEITELBAUM: Sit down.

THE COURT: You represent the Bunchers so you better sit down back there.

MR. CASEY: I offer to prove by this witness that there was never any extortion demands made

that he never had any conversation with the defendant relative to the payment of any money whatsoever at any time, and that he did not write on any paper the word $50,000, that in short, to contradict directly the testimony of the Witness Doherty on the major points involving the extortion.

THE COURT: It will be admitted for that purpose.

MR. TEITELBAUM: Do we have an understanding you have ruled on this business about going out to some other place to bid some other job and all that sort of thing can't be brought in by this witness?

THE COURT: Oh yes, I have ruled on that.

MR. CASEY: In connection with the offer, this witness to explain his part in the procuring of the bond and the filing and the signing, co-signing of the checks and the arrangement with the bonding company in regard to that and the fact that in many and many cases, he has his records showing the purchase of non-ferrous scrap metal and the payment therefor directly to Doherty.

MR. PALETTA: Judge, in the procurement of which bond now? There's a big question. There are two bonds. Which bond are you referring to?

MR. CASEY: Both bonds.

THE COURT: We will permit that.

IN OPEN COURT

Q. In the year 1952, sir, did you know George T. Doherty, the witness who just preceded you on the stand?

A. Yes, I did.

Q. How did you come to know him?

A. In the early part of 1952, the Carnegie Building was up for demolition. We learned that the Doherty Company had been awarded the contract of demolition. We sent one of our scrap solicitors to the building to ask if we could submit a price for the material resulting from the

demolition, that is, the ferrous and the non-ferrous material. It was at that time that we entered into negotiations for the purchase of the material. I was not present during the negotiations because I was taken to the hospital.

Q. What hospital and when?

A. The Montefiore Hospital. The dates—the date I was admitted was March 12th.

Q. 1952?

A. 1952.

Q. How long did you stay there?

A. I spent, I was released, I believe it was March the 20th.

Q. During that occasion do you know whether or not there were any negotiations carried on?

A. Yes, because at the beginning one of the requests that Mr. Doherty made was that a deposit of $50,000 be—

MR. PALETTA: Objection, just a moment. Now he says one of the requests that Mr. Doherty made. It sounds like he is talking hearsay. How does he know what the request was?

A. I was in at the preliminary negotiations. —was a request that $50,000 be advanced to him so that he would be able to start the job. We turned him down flat because we had checked his company and it did not warrant any advance in moneys. It is a common practice to advance moneys to companies for the purchase of scrap.

Q. How was this money to be paid back?

A. The money was to be paid back—well, you are getting ahead of the story, Mr. Casey. I mean, it was turned down and then the idea came up that Mr. Doherty would put up a surety bond or rather a casualty company, which turned out to be the Continental Casualty Company, would put up a bond to guarantee our re-payment of the $50,000, plus a penalty in the event that Mr. Doherty did not complete his contract. It was at this time that I was taken to the hospital and my brother

Jack took over on the negotiations with Mr. Savage who represented us and I believe his attorney was Mr. Wedner.

Q. Mr. Doherty's attorney was Wedner?

A. Mr. Doherty's attorney was Wedner. And during the course of the negotiations there was a question of prices to be paid for each item and Mr. Doherty and my brother Jack visited me at the hospital, where we agreed on specific prices for specific items and the $50,000 was to be paid back 50 per cent each week on the amount of material that was shipped.

Mr. PALETTA: Objection, Your Honor, that if he is testifying to the contents of the contract under the best evidence of just exactly what the contract contained.

A. Well, the contract is written in shall I say legal phraseology and my interpretation I believe would—

MR. PALETTA: I am sorry, Your Honor, under the rules of evidence, I don't want this witness' interpretation of the contract.

A. Well, I—

Q. In any event, there was a contract and there was a way the money was to be paid back?

A. That is correct.

Q. How long did it take to negotiate that contract, do you know?

A. I'd say approximately two to three weeks.

Q. Do you know of any prior negotiations by Mr. Doherty with another company with reference to this scrap?

A. I knew of prior negotiations because it is common practice whether it's Doherty or any other one to certainly consult a number of companies and attempt to get the best price for their merchandise.

Q. Did you give them a higher price than had been offered before?

A. I did not, no, at the time.

MR. PALETTA: Objection to hearsay unless he can show that this man knew what the price Mr. Doherty received before was.

THE COURT: Objection sustained.

A. I didn't know at the time what any other prices were. I found out later that our price had been higher.

MR. PALETTA: Objection, Your Honor, how he found out what his price was in relation to the other price unless he knew.

THE COURT: Well, he did get the contract.

Q. You did get the contract?

A. We were awarded the contract.

Q. What about the surety bond, did you arrange for that?

A. Yes, the contract was a three-fold deal between the Continental Casualty Company, the Doherty Wrecking Company and the Buncher Company. The Continental Casualty Company entered into the contract to guarantee us payment, to guarantee Doherty payment for the scrap, to guarantee that we would get our $50,000 back in the event that Doherty could not deliver the scrap and to guarantee a penalty to Doherty in the event he did not deliver scrap in a specific period of time.

Q. What sort of material was covered by that contract?

Mr. PALETTA: Objection, Your Honor, under the best evidence rule, once again he is testifying as to the contents of a written document.

THE COURT: Yes. Do you have the contract, Mr. Casey?

Q. Do you have the contract?

A. Yes, we do.

Q. Where is it, sir?

(Copy of bond furnished Buncher Company by Continental Casualty Company and copy of agreement entered into between Doherty Company and Buncher Company marked Defendant's Exhibit P.)

Q. I show you Defendant's Exhibit P and ask you what that is?

A. This is a copy of the bond furnished us by the Continental Casualty Company and a copy of the agreement entered into between the Doherty Company and the Buncher Company.

Q. That's a duplicate original, executed copy, is it not?

A. That is correct. We had shown that prior to this to the representative of the District Attorney.

MR. CASEY: I offer in evidence Defendant's Exhibit P.

THE COURT: Exhibit P will be admitted in evidence.

Q. Pursuant to this contract, Exhibit P, what did you do with relation to Doherty?

A. It was like any other ordinary job. We called when material was available.

Q. How were you called, how would that occur?

A. Usually by telephone and our trucks were sent over or Doherty's trucks delivered. It was a regular routine business of bringing—

Q. Could you send your trucks over at all hours of the day?

A. No, we only operate between eight and four-thirty. We never sent any trucks other than those hours.

Q. Then what would be loaded in those trucks and where would it be delivered?

A. It would either be scrap iron or non-ferrous material.

Q. Non-ferrous—

A. That refers to anything that isn't of iron content, like brass, copper, et cetera.

Q. Pursuant to that contract and the delivery of the metals, whether scrap iron or the non-ferrous, how in

your company did you handle the transaction and pay for it?

A. Ordinarily the company shipping the material would send you a delivery slip but in Doherty's instance, he never did it and when he would send a representative with our truck or his truck we would give him a receipt of the material delivered.

Q. Where would the material be weighed?

A. At our premises.

Q. So he sent a man along and then you'd weigh the material and give the man a receipt of so many pounds or tons, whatever was involved?

A. That's correct.

Q. Then you'd pay him how?

A. He received a weekly settlement. In other words, it would show the shipments, I believe, that were made from Monday through Friday and it would give him the slip numbers that were shipped and we settled on that basis.

Q. Would that be at the end of the next week?

A. No, at the end of the same week. In other words, on Friday his statement would probably be made up Saturday morning and credits that were due us would be deducted from that material. When I mention credits, I speak of oxygen that Mr. Doherty used in cutting the scrap, he purchased through us, tools or whatever he might have bought through us, would be deducted plus a portion of the $50,000 that we had advanced.

Q. What portion would that be?

A. It would represent 50 per cent of his shipments that he would ship that week ordinarily unless some weeks he was pinched or something, why we'd rescind the 50 per cent that week.

Q. Was this Exhibit P for the purchase of all the metal in the building?

A. Supposedly so.

Q. And the prices were set forth in here?
A. That is correct.
Q. Did you require a surety bond?
A. We required a surety bond.
Q. How was that arranged?
A. That was arranged through the Continental Casualty Company. Mr. Doherty at the time stated that he did not have the money to pay for it and we —

MR. PALETTA: Objection to what Mr. Doherty said, Your Honor. Hearsay.
A. No, it isn't because he told me.

MR. PALETTA: Let the Court rule, Mr. Buncher.
A. He told me, it wouldn't be hearsay.

MR. PALETTA: That's hearsay.
A. I am sorry.
Q. In any event for some reason you were to have a surety bond?
A. That's correct.
Q. Who made the arrangements for that?
A. Mr. Doherty.
Q. Were you in the negotiations at all?
A. No, sir, my brother.
Q. Who was from your company?
A. My brother Jack.
Q. Do you know of your own knowledge how the premium was paid and what the arrangements were made relative to the —
A. It was paid by the Buncher Company.
Q. Was that charged to Mr. Doherty's account?
A. I believe it was.
Q. Were any arrangements made for the deposit of the money due from the Buncher Company to Doherty to be deposited with the insurance or the surety company?
A. The original $50,000 was given to the bonding company who opened an account in the name of the

Doherty Wrecking but I think required the counter signature of a representative of the bonding company. If my memory serves me correct, the first few checks were given to the bonding company and then we received a letter from the bonding company requesting —

MR. PALETTA: Objection, Your Honor, as to any divulging of the contents of a document, letter.

Q. Do you have the letter?

A. Yes, we do.

Q. And that letter, did you receive it in the regular course of your business at the Buncher Company?

A. That is correct.

MR. TEITELBAUM: Could we come to Side Bar?

AT SIDE BAR

MR. TEITELBAUM: This is a lot of background on the operation of the Buncher operation and so forth but it isn't rebuttal. I wonder if we shouldn't for the purpose of getting this trial over, this is sur rebuttal, get down to the point instead of going over all this sort of thing.

MR. CASEY: If the Court please, defendant feels that since the charge of an independent crime under the theory of design and planned scheme is involved, that we are entitled to put in whatever defense we can under sur rebuttal, as far as that goes. There are certain matters that have to be explained by the witness leading up to his matter in the transaction.

THE COURT: All right, let's get on.

(Copy of letter from Continental Casualty to George T. Doherty marked Defendant's Exhibit Q.)

Q. I show you what has been marked as Defendant's Exhibit Q. Is that a copy of the letter from the bonding company to George T. Doherty, which you made reference to relating to the receipt of the deposit?

A. This is a copy of the letter that was mailed to Doherty Company and a copy of which was sent to us.

(Registered letter to Buncher Company dated December 23, 1952, marked Defendant's Exhibit R.)

Q. I show you what has been marked as Defendant's Exhibit R and ask you if you will, to identify this?

A. This is a registered letter sent to the Buncher Company. I don't know whether it is a follow-up of this one.

Q. What is the date of it?

A. December 23rd, 1952.

Q. That relates to the Doherty Wrecking Company, is that right?

A. This relates to the bonding company retaining joint control with the Doherty Company of any moneys received.

MR. PALETTA: I have no objection to Defendant's Exhibit P but I will object to Defendant's Exhibit R, subject to connection, relevancy. That is, I don't doubt the authenticity but on the relevancy point, I say that, subject to connection.

MR. CASEY: I offer in evidence Defendant's Exhibit Q.

THE COURT: You have no objection to that.

MR. PALETTA: No, Your Honor.

THE COURT: It will be admitted.

Q. With relation to Defendant's Exhibit R, was there a joint account set up with relation to Doherty and did you deliver your checks to persons jointly required by that Exhibit R?

A. You mean why?

Q. No, when. Did you do that?

A. Oh, every week.

Q. How did that work? What were the mechanics of that?

A. Well, the checks were made out to the Doherty Wrecking and Continental Casualty Company or a representative of the Continental Casualty. I don't recall the names. I think one was Adams, who was a representative, and those checks could only be deposited in a joint account that I assumed they had.

Q. At the time that that occurrd or the joint checking account, had you got all of your $50,000 back from Doherty?

A. No.

Q. During the time did you get the material the scrap material from the Carnegie Building and over what period of time?

A. Well the job stretched over a period of I'd say approximately a year.

Q. Was there any time limitation that you know of on the job?

A. I never saw his contract with the May Company. You mean, was there a time limitation on our getting the scrap?

Q. Yes.

A. Yes, there was.

Q. What was that?

A. I don't recall. It's in the contract. I think it was six months or five months. I don't recall.

Q. Did you get materials from the Doherty Company?

A. Yes, we did.

Q. Did you pay for those materials?

A. Yes, we did, every pound of it.

Q. All the pounds that you got you paid for?

A. That is correct.

Q. How were those payments made?

A. By check.

Q. On the check of what company?

A. On the check of the Buncher Company.

(Checks marked Defendant's Exhibit S.)

Q. I have had marked for identification as Defendant's Exhibit S a group of checks. What are they, sir?

A. These are some of the checks — I don't know whether we have them all here because of the limited time. I didn't know about this until Friday afternoon. — representing payments, including the initial $50,000 check that was given to me.

Q. Was that a certified check, the original one?

A. The original check was a certified check.

Q. The other checks then as far as Defendant's Exhibit S, what is their nature and payment for what?

A. Those are in payment of material received from the Doherty job.

Q. Would any of those payments be for non-ferrous metals?

A. Yes, it would.

Q. Over the period of time, Mr. Buncher, how much business did you do with Mr. Doherty on the Carnegie Building?

A. Actually—I mean I haven't had a chance to give you the total dollars and cents, but we not only did business with Doherty on the Carnegie Building, we received material from another job that he was doing while in Pittsburgh.

Q. Was that during the course of this?

MR. PALETTA: Objection.

THE COURT: Objection sustained.

MR. PALETTA: I object to these, Your Honor. They are irrelevant. This is sur rebuttal testimony and the testimony of Mr. Doherty was there were certains loads of non-ferrous metals which went to the Buncher Company which the Bunchers didn't receipt him for and which he didn't get payment for. Mr Doherty admitted that he received payment for the other materials and all this is doing is showing that he did get some payment.

A. But the newspaper carried the story in the beginning.

MR. PALETTA: Just a moment.

THE COURT: Just a minute, Mr. Buncher. You will please wait until you are asked a question.

MR. PALETTA: And I object to it on that ground, that it's irrelevant.

MR. CASEY: If the Court please, these checks, if I have to take them out individually and to show that they are in payment for substantial items of non-ferrous metals as well as ferrous metals from the Carnegie Building. That's the purpose of it to show there's numerous ones in here which were in payment to the Doherty Company of non-ferrous metals.

THE COURT: I don't think there's any question about that, as I understand it. Let me see the checks.

MR. PALETTA: There's nothing on there to indicate what those checks were in payment for, Your Honor. Mr. Casey said they were in payment for non-ferrous metals but I see that nowhere on the check.

MR. CASEY: The gentlemen said that. I didn't say that.

THE COURT: Mr. Buncher has testified to that.

MR. PALETTA: Mr. Buncher. Then, Your Honor, I object. Well, I will wait until the judge is finished examining.

THE COURT: Mr. Casey, I see some of these checks are made payable to Doherty Wrecking and Mr. Paul Hoffman. Is Mr. Hoffman a representative of the Casualty Company?

A. That's right.

MR. PALETTA: Your Honor, it is my recollection of the testimony, to get on to the next point,

the relevancy, he stated those checks were in payment for steel, scrap and non-ferrous, what I will call the precious metals, the copper, wire and brass. Now, we can't distinguish which checks were for the non-ferrous metals, being those metals which Mr. Doherty has testified were the ones which furnished the payment for Mr. Stirone and which were for the scrap, so that, as I say, at this stage of the proceeding, they are completely irrelevant unless they can tie in certain checks—

MR. CASEY: I will ask the man if he can tie them in.

Q. Can you, Mr. Buncher?

A. Every check there can be tied in with material received.

MR. PALETTA: And how?

THE COURT: Mr. Casey is asking the questions, Mr. Paletta. Just a moment.

Q. Can you tie it in from your records with reference to the non-ferrous metals as well as the ferrous metals?

A. That is correct.

Q. Do you say, sir, on the stand that you paid for all the metals, irrespective of what they were?

A. I paid for all the metals received at our place.

Q. Mr. Buncher, in the course of your receiving the ferrous and non-ferrous metals from the Carnegie Building, can you tell us how—strike that. Was there any difference in the prices for the non-ferrous and the ferrous metals?

A. When you say difference in prices, you mean in various grades?

Q. No. How would you pay for scrap iron or ferrous metal?

A. Well, scrap iron was based on a—pardon me, the scrap iron was paid on a per ton basis.

Q. What about the non-ferrous metals?

A. The non-ferrous metals were paid on a per pound basis.

Q. Per pound basis?

A. That's right.

(Copies of remittance advices to Doherty Company marked Defendant's Exhibit T.)

Q. I have had marked Defendant's Exhibit T, and ask you to tell us what those are?

A. These are copies of remittance advices sent to Doherty Company weekly. In this particular week it showed—

Q. Well now, are all of those—

A. Yes, this is just some of them.

Q. What relation does that exhibit and the matters contained in there have to the checks which have been marked as Defendant's Exhibit S?

A. Well, the check was included with the remittance advice, those checks.

Q. You'd send Mr. Doherty a statement such as the exhibit you have there, any one of those accompanied by a check in the proper amount?

A. That is correct.

Q. As shown on that?

A. That is correct.

Q. Do you have in your files the other invoices? Are those called invoices?

A. These are remittance advices.

Q. Remittance?

A. Advices.

Q. Do you have others of those in your file together with—

A. These are our files.

Q. Do you have any others at your office?

A. Oh yes, this is just what—I mean, we are going back quite a number of years. It was just a question of the amount of sufficient time.

Q. What I am trying to establish, these aren't all the remittances advices?

A. Oh no. It would cover a period of I'd say approximately a year.

Q. Can you go to your files and get all of the remittance advices?

A. Oh yes.

Q. And the checks relating to the Doherty transaction?

A. Yes, I believe we can.

Q. How long would that take?

A. I don't know but I would say two or three days.

MR. CASEY: If the Court please, if I may have a few minutes to tie these checks in.

Q. Mr. Buncher, I have taken a check from Exhibit S, I believe it is, and one of the remittances advices, one dated November 12, 1952 and the other dated November 6, 1952, one check in the amount of $2,000 and the other one in the amount of $1,800. Is that the way that the—

A. That's right. This is a check to go with this remittance advice. This shows that this check was paid November 12th. There was $3,056.46 worth of material.

Q. Talk into the microphone.

A. This shows that there was a specific amount of material shipped on which there was over $3,000 worth. We paid $1,800 with this remittance advice. The balance was applied to the original $50,000 that we advanced. In other words, the difference was $1,256 and it was deducted from the original amount and then carried week to week until the $50,000 was paid. Everything had been paid up.

Q. With respect to all of the material that was purchased by your company from the Doherty, the George T. Doherty or the Doherty Wrecking Company, did you make up remittance advices and pay him for the same?

A. Mr. Casey, I don't make remittance advices. We have bookkeepers. I don't handle any of that. That's handled through our bookkeeping department.

Q. Did you pay Doherty for all the metals you received?

A. To the best of my knowledge and I believe that is correct.

Q. Would that be in the regular course of your business through passing through your books?

A. That would be one of many similar transactions.

MR. CASEY: I offer in evidence Defendant's Exhibit T.

MR. PALETTA: Objection, Your Honor. He shows here $3,800 worth of payments of non-ferrous metals. Fine. This in no way contradicts Mr. Doherty's testimony, which was to the effect that out of some $50,000 of non-ferrous metals, he might have received some seven or nine thousand but it still doesn't account for the remaining thirty-five some thousand dollars which he never received payment for.

THE COURT: With the understanding, we will let the exhibit in evidence.

MR. CASEY: It's only explanatory of this man's testimony.

THE COURT: What is the number of it?

MR. PALETTA: T.

Q. Mr. Buncher, did you ever make an appointment with Nick Stirone for Mr. George T. Doherty?

A. No, sir, I never did.

Q. Were you ever present in the William Penn Hotel at a club room there when Mr. Doherty said that Nick Stirone told him that he put a $35,000 price tag on the job?

A. To my best knowledge and belief I was never there.

Q. Did you ever hear such a demand made by Stirone?

A. No, sir.

Q. Did you ever intercede with Mr. Doherty on behalf of Stirone?

A. No.

Q. With reference to any payments whatsoever concerning the salvage material from the Carnegie Building?

A. No, sir.

Q. Did you ever approach Mr. Doherty with a newspaper and write the word $50,000 on it?

A. No, sir, I didn't.

Q. Did you ever make any arrangement with Mr. Doherty relating to the non-ferrous scrap which was to to your company with no invoice, nothing but a scrap of paper, and then not pay them for it?

A. To my knowledge there was never anything like that.

Q. Did you pay any money to Nicholas Stirone as a result of any such deal?

A. I never paid Nick Stirone a nickel.

Q. Did you ever ask Mr. Doherty whether or not he was ready to give in and then make reference to a cash settlement and then make any arrangement relating to the non-ferrous metals to go to your yard for free?

A. No, sir, the first I heard of that was when I read it in the newspaper.

Q. Mr. Buncher, were you ever at any time in the company of Nick Stirone, the defendant here, and George T. Doherty, the preceding witness?

A. Yes, I was.

Q. Where was that?

A. That was in Mr. Stirone's office.

Q. What was the occasion of that?

A. I would say, I mean I am relying strictly on my memory because at the time it happened, it had no bearing. We got a call from the job, I would say the job

had probably been started or probably been operating about two or three months. I mean, I am purely guessing. It might have been six weeks, it might have been—I have no way of giving you an exact date, and it was one of the truck drivers who had phoned in saying that the men were on strike over at the Doherty job and what should they do, should they wait. They were over there arguing or should the trucks come back. The message was relayed to me and I went over to the Carnegie Building. I met with Mr. Doherty and he was waiting for Mr. Huff, who was the business agent for 178.

In the meantime, everything was shut down. There was no work going and I had asked him if he had been up to the Union Hall, which was approximately a half a block or a block from there, to see if he could locate Mr. Huff and get the thing straightened out. So he said no and he asked me if I'd walk up and show him where it was. He and I both walked up to Mr. Stirone's office, which is also the office of the business agent or was at that time, I imagine, Mr. Huff. We went up looking for Mr. Huff. Mr. Huff wasn't there. We saw Mr. Stirone. We told Mr. Stirone that the job was on strike. I was interested in getting my trucks moved from there and Mr. Stirone promised that he would see if he could locate Mr. Huff and get the thing straightened out.

As I understand, the strike, as I recall, was due to a safety regulation of some kind. And we went back to the job, Doherty and I and I'd say in about an hour or so, Mr. Huff came down and they had a meeting with their steward and their safety man and the men went back to work. That's the only meeting I ever had with Mr. Stirone and Mr. Doherty present.

Q. How often would you go to the Carnegie job during the course of demolition there?

A. I would go there pretty often, Mr. Casey, at the insistence of the Continental Casualty Company. They

asked us to check on the job and report to them. I would say when you say often, once every two weeks or something like that. I don't recall, I mean, I wouldn't make a special trip over there. If I was in town, I would stop.

Q. Mr. Buncher, Mr. Doherty says, "About seven or eight days after I did start, Mr. Al Buncher approached me again. He said, 'George, have you changed your mind in any way?' I said, 'Well, I will listen to reason.' So there was—Did you ever have any conversation with Mr. Doherty such as that?

A. No, sir, never, nothing like that.

Q. Did you ever have any conversation with Mr. Doherty relating to a reduction from a price of $35,000 cash payment to a $10,000 cash payment?

A. No, sir.

Q. Did you ever have any conversation with Mr. Doherty relating if he would pay the $10,000 that his labor troubles would be taken care of?

A. No, sir.

Q. Did you ever agree with Mr. Doherty that he was to send his metals to your company and that you were not to give him a shipping receipt, but it was to be on a piece of scrap paper only?

A. No, sir, I never agreed to anything like that. In the first place, I receive very little material over at the plant.

Q. Very little of what kind of material?

A. I mean, I don't sign material in.

Q. How is that handled?

A. Well, if there's a number of people in the yard, as it comes in, it is weighed and a voucher is given to them or a delivery slip is signed.

Q. When they turn the material over to your company?

A. Yes, they either have a delivery slip or we give them a voucher.

Q. When you say "we", do you do that or—

A. Our company. No, unless I happen to be standing there, it would be oh, one of a half a dozen people.

Q. Mr. Buncher—

A. I'd like to say something if it is agreeable with you, Mr. Casey.

THE COURT: Just a minute, Mr. Casey. I have ruled on this before in this trial.

Q. Did you give a statement to Mr. Stiles of the F.B.I.?

A. Mr. Stiles came into our office. I have the date marked there. I don't recall. I don't know whether Mr. Stiles does. It was in I think 1955, was it? I don't recall when it was.

Q. Did he take a statement from you?

A. Yes, he did.

Q. Did you tell him substantially what you are saying here on the stand?

A. I believe I did, to the best of my recollection.

Q. Were you ever into the United States Attorney's office?

A. Yes, I was.

Q. When was that?

A. I don't recall the date but it was I think sometime in '56.

Q. Who did you talk to there?

A. I spoke to Mr. Anderson and Mr. Teitelbaum.

Q. Did they ask you about this case and discuss your testimony?

A. They didn't discuss my testimony. They asked about the case.

Q. Did you tell them—

A. I told them—

Q. What did they ask you?

A. I told them everything I could tell them at that time without being able to provide records that we had not dug up.

Q. Did you tell them at that time the same as you are telling us here today?

A. That is so.

MR. TEITELBAUM: Objected to, Your Honor. Prior inconsistent statements have no value.

THE COURT: That is true.

Q. When you talked to Mr. Teitelbaum and Mr. Anderson, is that the time the Grand Jury was in session?

A. No.

Q. Were you called to testify before the Grand Jury?

A. No, I wasn't. I might add that I voluntarily went in to see Mr. Teitelbaum.

Q. Did he bring in Mr. Anderson?

A. No, I saw Mr. Anderson first and I think Mr. Teitelbaum was handling the case or something. It was referred to Mr. Teitelbaum.

Q. By Mr. Anderson?

A. That is correct.

Q. Mr. Doherty has said, "Al Buncher continuously, without a let-up, had contacted me—well, just repeatedly, after I had paid the original ten thousand dollars in metals."

Did you ever contact him at any time and keep after him?

A. That is an unmitigated lie. I never contacted him in behalf of Stirone. I never had any reason to. I had nothing to gain if he did not deliver the scrap due to the surety bond.

Q. Did you tell Mr. Doherty that Stirone has received his money and that everything was satisfactory?

A. I don't know what you are referring to, but I never told him anything of that sort.

Q. Mr. Buncher, when you entered into this contract marked as an exhibit here between the Doherty Company and your company, was any pressure exerted on you by anyone to enter into that contract?

A. I don't follow what you mean.

Q. The contract between Doherty and yourself?
A. Was I pressured?
Q. Your company pressured into entering into that contract with Doherty by Nick Stirone or anyone else?
A. No, sir.
Q. That was a negotiated contract?
A. Definitely. I mean, the contract proves it.
Q. Did you use any pressure or cause any to be placed on Doherty with relation to the salvage contract for the Carnegie Building?
A. You will have to repeat that?
Q. Did you put any pressure on anyone so that Doherty would give the contract to you?
A. No, sir.
Q. Do you know of any pressure being applied on him at all?
A. I would say no, there's none that I know of.
Q. Cross examine.

* * * * * * * *

JACK GEORGE BUNCHER, a witness in behalf of the defendant, having been duly sworn, testified as follows:

Direct Examination

BY MR. CASEY:
Q. What is your name?
A. Jack George Buncher.
Q. Where do you live?
A. 6570 Beacon Street.
Q. How long have you lived in Pittsburgh?
A. All my life. I was born and raised here.
Q. How long is that?
A. I am now 45 years old.
Q. What is your business or occupation?

A. Well, we are in—this case deals with one phase of our operation which is the scrap business, although we do buy and sell plants. We have operated a number of different kind of plants around the country, shipyards, steel mill operations— bridge construction companies. We are now very, very heavily engaged in plant development, industrial district development. That is, the building of buildings for industry and we have such a project here in Pittsburgh, very close at Leetsdale.

Q. How were you engaged in '52?

A. Well, in '52 we were engaged pretty much the same manner as we are at present.

Q. When you say "we" who is that and what is that?

A. Well, my brother and I, of course, own the company.

Q. Is that a partnership or corporation?

A. It is a partnership and of course, we operate other companies from it.

AT SIDE BAR

MR. CASEY: I offer to prove by this witness that at no time was there any scrap delivered from the Doherty job to his company in so far as he knows, that was not paid for, whether it be non-ferrous or ferrous.

THE COURT: That will be admitted.

IN OPEN COURT

Q. In '52 you did buy some scrap material from George T. Doherty, trading as Doherty Wrecking Company with said scrap coming from the Carnegie Building in Pittsburgh?

A. That is correct.

Q. What would be the mechanics, Mr. Buncher, of delivery and the mechanics relating to the payment therefor?

A. Well, I don't — well, first, we will talk about the mechanics of payment. Would you want to handle that separately?

Q. Yes, all right.

A. When Doherty pays, we had made arrangement with the bonding company for our protection and securing the scrap or a return of our money and we advanced fifty—

MR. TEITELBAUM: We will agree that he's going to describe the method same as his brother did for the purpose of saving time.

THE COURT: He agreed that the method described by Mr. Al Buncher is the method which was employed.

MR. CASEY: All right.

Q. Over the $50,000, that's the same as your brother Al described?

A. That is right and as deliveries are made, credits are issued against the $50,000 and when that amount has been reached, whatever the additional sums are, we then submit checks for it and in this case, if I recall correctly, there were additional sums beside the $50,000 advanced because there was—

MR. PALETTA: Objection, Your Honor, if he is going to talk about anything other than what is involved in the Doherty case.

A. This is in the Doherty. This is in.

BY MR. PALETTA:

Q. On the Carnegie Illinois Building?

A. That's right. I think what happened there, if I recall correctly, the moneys ran out or something and the bonding company asked us to put up some more money or to make payments in another way other than the normal way than had been originally agreed, but beyond that, there was nothing out of the routine, nothing out of routine or ordinary operations.

BY MR. CASEY:

Q. Do you mean by that that after a while you turned over what Doherty had coming to the bonding company to a joint account and made the checks to joint account?

A. Well no, in the first, the contract—by the way, I was the one who drew up the contract. I mean, my name is on the contract and I was present with the attorneys at the drawing up of the contract. I didn't get it until one of our people had turned over to me for the final negotiations and drawing up of the contract.

The bonding company in the contract had asked the check be made out to Doherty but he delivered to them and they in turn gave us a letter as to how they would handle this money. After a period of time, there was some mix-up, I am not too clear on just what the mix-up was but the bonding company said now we would like a re-arrangement of how these funds are handled—

MR. PALETTA: Your Honor, I object to what the bonding company said, as far as hearsay is concerned. If he can tell us what happened without telling what the bonding company said.

A. Well anyway, we were directed to issue the checks from that time on in joint names, rather than in Doherty's name alone. Originally the checks were issued in the Doherty name alone and supposed to be turned over to the bonding company.

Q. In any event a little after that, the bonding company asked you to make them in the two names?

A. Well, I don't know long after that it was. I do recall that it did happen.

Q. Mr. Buncher, will you tell us just how much of your time at that time was taken up at the Buncher plant, what do you know about his operation?

MR. PALETTA: Objection, Your Honor. It's not in accordance with the offer that was made at Side Bar.

MR. CASEY: If the Court please, I amend the offer then. I want to qualify the man as to how much time he spends there and if he knows—

THE COURT: Go ahead, ask him that.

A. Will you read—

THE COURT: I will overrule your objection.

A. Will you ask your question again?

Q. How much of your time in 1952, just what were your duties over there and what do you know about the operation of Buncher and Company?

THE COURT: Take one at a time

A. Of course, I often feel that I know everything about the operation of the Buncher Company. There's lots of times I feel I know very little about it.

Q. Tell the jury one of those times you feel you know lots about it.

A. Of course, the particular period that Mr. Casey is referring to happens to be a period when my brother was sick. He had a series of these stones and it was a time when I had spend quite a bit of time in the office: normally we sort of split it up and shifted around but I do happen to recall having been a little bit more than normally in the office and in the plant here locally in Pittsburgh.

Q. What about the signing of checks on Buncher Company?

A. Well, the signing of checks is done normally by Al or myself. I don't recall, I don't know any particular significance to it.

Q. You did sign either one of you signed the checks or both?

A. Oh yes, the signing of checks are all Al or myself.

Q. Now, in 1952, would you be able to tell us and could you tell from your operation of the business if any material came in that wasn't paid for in the regular course of business?

A. If that were to happen, it would be very strange. I don't know how such a thing could happen. I can't visualize that anything would ever come into the yard and not be paid for.

Q. Can you tell us from any personal knowledge you have with relation to you being a partner in the yard, as to whether or not that was ever done and any payments made to Nicholas Stirone regarding the Doherty job?

A. I can say this, I have no knowledge, no knowledge, no knowledge of any payments being made to Stirone. I have no knowledge of any material being delivered to us for Stirone's account. I have no—I can't visualize any single way that material could come into our yard without it being properly recorded and handled as a transaction, a regular transaction.

Q. If such a payment was made to Stirone or anyone else on that type of a transaction, would it come to your attention in the finances of the company and would you know about it?

A. Well, let me say this: My brother and I have been partners for well—we have been partners ever since we can remember and there is very little, as a matter of fact, we don't buy anything unless we buy it together and any operation or any transaction, I am sure that—well, he hides nothing from me, I hide nothing from him. There's no transaction, especially something that would be as important or well, just resulting in what you see now, he certainly would have called it to my attention.

Q. And you could have known from the books of the company about it?

A. Positively.

Q. You say that no such transaction occurred?

A. No, sir.

Q. Cross examine.

[*Chronologically this comes immediately before the row of asterisks at 275a, and consists partly of a repetition of material already printed at 274a and at the top of 275a.*]

I submit to you, ladies and gentlemen, if there were no restrictions by the Court if we weren't watching what Mr. Dierker said, he'd have been willing to testify that Mr. Rider lit his cigars with hundred dollar bills. He'd have said anything they wanted him to say because he was saying it. There was no problem about that. That shows you what pressure Mr. Dierker is subjected to, so would Mr. Rider make up a story like that?

If you want to make up a story out of the whole cloth, it would be much easier to say Stirone came out himself in an automobile and there was nobody there but Stirone and I when he made the threats. That's what somebody would say if they were making it up. That's exactly what they would say if they were making it up. That's exactly what they'd say. And conveniently enough, Dierker was there and Rider put him right there. Rider wouldn't have had to put him there. Rider could have said Dierker was nowhere around if he was just making up a story. But he told you the truth, he told you Dierker was there. He say that Stirone said to him, "I want 50 cents a cubic yard, of every yard of concrete delivered," so I asked him why. Why did Stirone say he wanted it? "I didn't have to ask him why he wanted it, I knew who he was and I knew it was a shakedown." He knew who Stirone was, he knew his reputation and he knew when Stirone said, I want 50 cents a square yard, he knew right then and there it was a shakedown.

Of course, he got mad. Of course, he got out of the car. Of course, he got excited. What else would he do? But then Dierker comes into the picture again and Dierker says to him, "Oh," he says, "Bill, you got to go through with this." Dierker applied further pressure to him.

Now normally it's not unusual. For example, a person, a man is walking along with his wife and a robber comes out with a gun and he says, "Give me your money or I'll shoot." Somebody says, "Now wait a minute, I don't want to give you my money." They might originally not want to do it. But then they begin to think, if they don't give it they're going to get shot. So they change their mind.

Now, were they not afraid of the robber? Didn't they give it to him because they were afraid of him? Merely because their immediate reaction was outraged indignation that anybody should ask about a thing like that?

Were there any threats of labor trouble? Mr. Stirone said to Mr. Rider, "If you pay me the money, there won't be any labor dispute." The defense would have you believe that that's not a threat.

Ladies and Gentlemen, if a robber says to you, "Give me your money or I will shoot," that's a threat. There's no question about that. If he words it the other way and says, "If you give me your money I won't shoot," it's still a threat. And when a man, when a powerful labor leader like the Czar of the local labor union here in the building industry says to somebody, who is engaged in the construction business and who is selling supplies for the construction business, when he says to him, "If you pay me, there won't be any labor disputes," he didn't have to spell out what was going to happen if he didn't pay him. It was as clear as anything could be clear and there was no other purpose to saying a thing like that than to infer that if you don't pay me, there will be labor trouble.

Now, all this occurred at the Belle Vernon plant after the first delivery of concrete by Rider and after Rider in his own mind was satisfied that he had the contract because Kassab had told him, "You don't have to worry," and because he had gotten the first delivery. Now, maybe technically he didn't have the contract. Mr. Rider is not a Philadelphia lawyer. Maybe technically under the laws of contracts and Mr. Casey even told something about the statute of fraud, of all things, Mr. Rider doesn't know anything about the statute of fraud, that a contract over a certain amount of money has to be in writing or it isn't binding, how many of you who are not lawyers ever heard of that rule? How many of you ever heard of the statute of frauds?

So why should Mr. Rider be expected to know that? He thought he had that contract when he got that order. And when Nick saw him, he thought he had the contract.

What was in his mind? Why did he make the payments? Well, he told you why. He says, "I had borrowed sums of money invested over there, I needed the job, and I thought if I didn't pay him, I wouldn't get that job." He went back and he told that to his wife, and she says, "Well Bill, why did you have to pay a man 50 cents a cubic yard for cement that you have already sold? Why?" And he says, "Honey, do you want the trucks to be sitting out in the yard all winter? We won't keep the contract." And then he says, "And we won't get any more contracts."

Now, he was talking about the contract with Ragnar-Benson. He never said to Stirone, as Mr. Casey would have you think, "I got the contract, I am not afraid of you, get out of here." Can you imagine saying that to Mr. Stirone? He never said that to Stirone. He got mad, he got out of the car, he was talking about other contracts because he says, "I not only would lose this contract," and he's told you that, "But I won't be able to get other work either." He was afraid that if he didn't pay off the shake-

down money to Stirone, he would suffer economic loss, he was afraid that there would be labor trouble, so he paid him. He told you that and he also told that to his wife and she told you that when he got back to his office.

He tells you that the first payment was in February of 1952. He says that he went into Mr. Stirone's office, he took a check and he took it in and he walked up the steps to the third floor. He says one stairs up and then you turn and you have another stairs, the winding steps, went into a private office and gave the check to Stirone

What difference it would have made whether he mailed it or delivered it, I don't know, but Mr. Casey chose to make a great issue of it by saying, putting Mr. Stirone on the stand who testified, "I got that check at the Bigelow Apartments," in that same positive, certain tone that he says, "On August 29th at ten o'clock in the morning I was over at Ragnar-Benson." At ten o'clock in the morning on August 29th, 1951, he was over at Ragnar-Benson. That same positive tone. "I got the check at the Bigelow Apartments, I got the paper and I remember it." That's what he said. He wasn't even living there. He was living out in the Coronado. So he couldn't have gotten it there.

Why do I point this out? Is it important that he had moved from the Coronado to the Bigelow? That isn't important. Could anybody make a mistake about moving from the Coronado to the Bigelow? Certainly, anybody could make a mistake, but when one speaks with such certainty down to the hour and when one tells you what envelope he had it in and whether there was a paper clip in it and whether the paper clip was taken out and how it was photostated and all that, that person who speaks with such certainty can not then say, it is unimportant that I wasn't even living at the Bigelow when I say that's where it came.

There is no question though that the first payment was received and there's no question, I submit, that Mr. Rider is telling the truth when he said he delivered it personally. What reason would there be to say he delivered it personally, if he happened to mail it? And how can you believe Mr. Stirone's version when he told you it went to the Bigelow when he wasn't there? Subsequent checks were mailed to the Bigelow Apartments and the Waldorf-Astoria and Florida. Mrs. Rider testified to that. We didn't try to draw any insidious inferences. That's where the checks were mailed. Who drew the insidious inferences? Who said to you, "Mr. Rider made trips to Bermuda and all over the country"?

There isn't one iota of testimony in this evidence Mr. Rider has ever been on a boat, Mr. Rider has ever been in Bermuda, and if Mr. Rider has ever been out of the country. Mr. Casey told you he went to Bermuda. Why? He says there's a check. There's a check to the Bermuda Inn which doesn't happen to be located in Bermuda.

Mrs. Rider told you that a total number of checks of $31,274.13 was mailed. There's no question they were mailed. There's no question they did get into Stirone' bank account. He tells you something else. He says that when the checks were late, Stirone or Dierker would phone. Mrs. Rider told you in one instance she talked with Mr. Stirone. Mr. Rider said they talked to Mr. Stirone about waiting a little bit for his money. They were pressed, waiting a little bit, he had no expenses, and Stirone said to him, "I got people to take care of too." Remember that? That's what he said. I wonder who he had to take care of. I wonder if the testimony given here on the stand doesn't throw quite a bit of light on that.

He says also that Dierker would phone. Isn't that unusual? Mr. Dierker, he says, only has a few laborers that are in Stirone's union. They don't have relations

together. They run into each other every once in a while at the Continental Bar and the Carlton House. But they don't have any relations together, but Mr. Dierker was perfectly willing to try to be Mr. Stirone's collection man. He was willing to call by his own admission, he called Rider three or four times and told Rider Stirone wanted to talk to him.

Mrs. Rider says that Mr. Dierker even told her, "The boy friend is getting nasty." Mr. Dierker said "I didn't say anything about a boyfriend. I just said, 'Call him'". Well, he at least admits that he did call up and why did he call up? The powerful labor Czar asked him to call up and Dierker, true and faithful toady that he is, trotted to the telephone and called him up, and says, "Hey look, let's get the payments to Nick. Nick wants his money."

Mr. Stirone didn't even discuss this matter with Mrs. Rider until Mr. Rider told him it was O.K. Mr. Stirone agrees to that. He says he was too fine a gentleman to discuss money matters with a man's wife. He wanted to discuss it with him. Is that the reason or is it because he knew there was something illegitimate about it and he thought it ought to be kept a secret and he didn't want to discuss it with anyone except Bill Rider personally?

At the end of the contract, Rider still owed about fourteen hundred and ninety dollars on some of these deliveries. Mrs. Rider tells you that Mr. Stirone kept after it—kept trying to collect until they went into bankruptcy. Then he stopped making this claim. Of course, Mr. Stirone tells us "I didn't even know he went into bankruptcy." Is that reasonable? Is itre asonable that a man you had business with that you had been calling and owes you money, he says he didn't know he owed him money. He didn't know how much concrete was delivered He had checked with Kassab about whether Rider was getting paid. His buddy Dierker was getting 15 cents a barrel for every bit of concrete that Mr. Rider was batch-

ing so why wouldn't Mr. Stirone know how much concrete had been delivered? He always knew every time he called up. He knew how much money was due and he knew how much concrete had been delivered.

Now, as I say to you, your question is, was this an extortion or was Mr. Stirone peddling influence, as he tells you? Was he a five per center? And this was about five per cent. Was he selling influence as an influence peddler or was he an extortionist?

I asked him on the stand, "Did you ever get any other commissions for this kind of transaction? Did you ever charge—did you get anybody else a contract and get a commission for it?" Oh, he said, "No," he never had done that in any other case from the time he came to Pittsburgh in 1937 until right now. So obviously he did not, he says, make a practice of getting a fee for using his influence to get contracts, but had he made any other shakedowns?

Well, to show you that, we brought in the instance of Mr. Doherty and the instance of Mr. Hawthorne. It was for the purpose of showing that this was a scheme, a design, a plan, a method of operation that Stirone indulged in, not for the purpose of showing he was a bad man, because whether he is a bad man or not is not what we are here to decide. We are here to decide the issues of the case. We show that this is his plan or scheme of operation.

Now look at Doherty. Doherty got on the stand and told you he was taken before Nick Stirone, brought in there by Al Buncher, Stirone told him, "I got a $35,000 price tag on this thing." He didn't have the money to pay $35,000. He told him, you got $35,000 rocks in your head or something like that. Eventually there was an agreement to pay $10,000; after he went out he refused, he learned his lesson in about five, six weeks, he was back again, he had plenty of trouble in the meantime, he changed his mind, but he still didn't have the money.

He made that clear. But he did agree to deliver copper, the metal and the other such metal, metals other than iron and steel to the Bunchers and they were to take care of Stirone. He says that agreement was made by Bunchers and Stirone.

Now, they deny it. Well, the two Bunchers were here in court and they both testified. What would you think Mr. Buncher would have said when he got on the stand and asked if he took part in a dirty deal like that? Would you have expected Mr. Buncher to do anything else but say no? But they say, Mr. Stirone told you oh Doherty had a pipe-dream.

Well, if Doherty wanted to say that Stirone extorted him, why would he say that it occurred in front of Buncher? Why him? Would he say it occurred in front of a witness when he knew that that could then be checked? Listen to Stirone's story on it. A more fantastic thing I never heard. He says that in 1952 Al Buncher knocked on his window and asked where Larry Huff was, that he said, "I will try to locate Larry Huff," and and that he called Larry Huff up. That's the last time he saw Doherty until he was here in court. Doherty had no labor relations with him, his labor relations were with Larry Huff. Of course, Larry Huff is one of Mr. Stirone's union men, he had the hod carriers under Stirone's District Council, but the immediate dealings of Doherty were with Huff.

If it were true that he only saw Stirone once for a few minutes in 1952, why with all the people in the City of Pittsburgh would he say that Stirone is the one that did all this. He would have no reason to have anything against Stirone, he didn't know Stirone. If you believe Stirone he only saw him for a few minutes, and I asked Stirone that on the stand last night. He didn't answer me.

As to Hawthorne, we brought that in for the same reason. Mr. Casey says that Hawthorne said it was no

shakedown. Remember what happened. Hawthorne says that Stirone asked him for some money, asked him for some money. Why did he give the money? He said, "Well, I knew what had happened to Doherty down the street. I thought I better go along. I gave him three or four thousand dollars." He said then, it was brought out, one of the most amazing pieces of testimony that I have ever heard since I have been in this court.

It was brought out that the defense after Hawthorne had so testified before a Grand Jury, that Hawthorne was in Mr. Casey's office and at Margiotti and Casey. I don't think Mr. Casey was there, but members of the firm witnessed a statement in which he says, "I never gave Nick any money," just after he testified the other way in the Grand Jury a few days before that.

But the most significant part of it all was "on the same day I signed that statement Nick Stirone loaned me some money." What do you think about that? That's one of the most fantastic pieces of testimony that I have ever heard given in a court. And there was the statement. The statement was signed by Arthur Gatz, who is presently of counsel and the statement was signed by another member of the law firm of Margiotti and Casey as witnesses and the judge took judicial notice of the fact that the other attorney, Mr. Goldstein, was a member of that law firm.

So they say, Mr. Hawthorne then now shouldn't even mention it. You are right, they shouldn't. They should be ashamed to mention it. Mr. Hawthorne said on the stand, "I testified before the Grand Jury that I gave money to Stirone and I am testifying before the Grand Jury,—before this jury now that I gave money to Stirone and I gave him three or four thousand dollars."

He says Stirone always had a reason. He says it was for a political contribution. He says it was for a welfare fund or something else. That isn't why Hawthorne gave

the money. Hawthorne gave the money "because I knew what happened to Doherty down the street, and I figured I better go along."

Then Mr. Duval took the stand, an honest man took that stand and said, "I went and got ten one hundred dollar bills at the instruction of Mr. Hawthorne, and I mailed them to New York City to Nick Stirone in the Waldorf-Astoria Hotel." That was his testimony.

Nobody asked Mr. Hawthorne and nobody asked Mr. Duval, of course I couldn't because I couldn't even dream up such a fantastic story, whether or not it was to pay a loan to this venture artist Labowitz in New York. Nobody even asked him if that were true, if that were the reason Nick Stirone paid that money. Why did nobody ask either Hawthorne or Duval that? Why didn't it come out until Hawthorne and Duval were carefully out of town and the emergency witness, the venture man, fast buck artist, Joe Labowitz, shows up and takes the stand, from New York. He flew in from New York.

He gets on the stand, he says something that's very unusual. He says, "I was a partner in buying the scrap that Hawthorne was tearing down. I and the man by the name of Riesberg were buying that scrap." He admitted he was also a partner in certain other deals with the defendant, Nicholas Stirone. Isn't it significant to you that this witness of convenience, this emergency witness took the stand and testified to that thousand dollars and that nobody asked Mr. Hawthorne about it, nobody asked Mr. Duval about it?

Let me ask you something else. If you owed a man a thousand dollars for a legitimate purpose and you have a bank check on the Mellon Bank and the man happens to be a powerful, influential man like Nick Stirone, do you mail the check to New York? Or do you go to the bank and get ten one hundred dollar bills? We all know the answer to that. If that was the payment of a debt, there

would have been no reason to send ten one hundred dollar bills to Nick in the Waldorf-Astoria. They could have sent him a check obviously, it wasn't that.

Did you notice something else? That check to the Waldorf-Astoria went there in about the same time that Mrs. Rider sent one of her checks to the Waldorf-Astoria, where Mr. Stirone was staying.

Let's examine, if we may, for a few minutes, the Stirone version of this case. I told you the Government version. Let's look what Stirone says. He says on August 27, 1951, he was having lunch at the Carlton House. I am not a very good artist, you'll have to use your imagination that that's the Carlton House. (Drawing on blackboard.)

He says he met him over there, they were having lunch and he says, that they habitually met there, that all the big wheels in the contracting business met there and that he as a part of his representation and not because he wanted to eat in the Carlton House, as a part of his representation and to do well by his laborers, he would go over there and eat in the Carlton House too, so he could talk to them. He didn't say it once it was at the Carlton House, he said it ten times that it was at the Carlton House. Mr. Casey says, oh, that isn't important. Any body could make a mistake. It could have been the hotel across the street.

But remember, this whole story about the meeting at Ragnar-Benson's office with his toady Dierker all stems from this meeting at the Carlton House.

MR. CASEY: If the Court please, I know we made an agreement that I wouldn't interrupt, but such an obvious mistake, a meeting of Ragnar-Benson. There's nothing in the testimony whatsoever.

MR. TEITELBAUM: I'm sorry. It was a meeting at Mr. Dierker's office and I thought everybody understood that the meeting was at Dierker's office.

This whole meeting at Dierker's office stems right from that meeting at the Carlton House. Everything is built up on that meeting at the Carlton House. Stirone gave you the background, he gave you a long spiel about how they always met at the Carlton House. He gave you a long spiel on my examination. The judge let him say it again. He told the story again about how all those contractors met there.

Then Dierker came along and Dierker too remembered having lunch that day at the Carlton House. Now, I say to you, that that shows this is a concocted story, a made-up story.

You know, if you are telling the truth, things like that don't happen. If you are telling the truth about how a certain series of events took place and you take the basis cornerstone, the foundation of the whole story which was the meeting at the Carlton House, you couldn't possibly be wrong, you couldn't be, you couldn't make a mistake like that unless you were making up a nice big long story that wasn't true. But the significant thing is Stirone said it was the Carlton House. That was his recollection and Dierker says it was the Carlton House and that was his recollection. He and Stirone both made the mistake. What does it show? It shows he and Stirone sat down and concocted a story and both made up a story about the Carlton House.

The next day Mr. Stirone took the stand and said he had refreshed his memory. Ladies and gentlemen, I submit that I helped refresh his memory. He says now he can recollect it was in the Continental Bar over at the William Penn Hotel and that all these contractors were always meeting over there.

But what is even more significant than that Mr. Stirone refreshed his memory, is the fact that also, lo and behold, who came next or a little later, the toady Dierker, he refreshed his memory too and where did he remember it

the Continental Room of the William Penn, but he had a little trouble getting in there. He made a mistake. He first said that he ate in the dining room of the William Penn, which isn't the bar, and Mr. Casey asked him again, he says, "Well, Nick Stirone had a booth at the bar there." I don't know whether there are any booths at the Continental Bar, but he remembered that under that examination.

That shows you that Mr. Dierker was willing to testify to anything that Czar Nicholas Stirone wanted him to testify to. He'd testify to anything. He'd come right back up there on the stand, a man in his position and say, "Oh yes, I have refreshed my memory. As I recollect now, it was the William Penn." It shows that the whole thing is a fabrication.

Then he says Dierker told him he was building a crushing mill at the Belle Vernon plant and that Rider was going to be a tenant and he hoped that Rider would get the contract. Of course, Rider had been a tenant, Rider had been a tenant for months and perhaps for longer at the time of that conversation.

Then Dierker said that—then Stirone says, Dierker asked him to get the contract for Rider, and he says that he was very reluctant to get the contract for Rider because he says, Mr. Dierker, "You know, I don't know Mr. Rider and unless I know him and I am satisfied of his capabilities and so forth, how can I go out and give him this contract."

You remember Dierker. Dierker's testimony was the opposite. Dierker's testimony is that when he said to Stirone, "Who is going to get that contract?" He didn't know. Stirone says, "Well Ragnar-Benson is going to get it." Then he told him about Rider and Stirone offered to get the contract, saying, "I know people at Ragnar-Benson, I know Kassab, I can get him the contract, but I want a commission. I want a commission of 50 cents a square yard."

Now, you've got Dierker, the toady and Stirone telling opposite stories about who was willing to do this. Stirone says Dierker asked him; Dierker says the opposite. So you have a conflict in their testimony.

Then Mr. Stirone says and Mr. Dierker says, that Stirone says that on August 29th, '51 at ten o'clock in the morning, they had this famous meeting over in the office of Duquesne Slag, of course, and not Ragnar-Benson. He says he remembers it was August 29th at ten o'clock in the morning. Fantastic.

He tells the jury then when they went in there he went through a certain conversation and it's such an unusual and such a fantastic conversation that it almost startles your imagination.

THE COURT: Mr. Teitelbaum, if I may interrupt, do you wish to take a five-minute recess?

MR. TEITELBAUM: I'd be very pleased. (Recess taken at this time.)

MR. TEITELBAUM: I was referring to the little conversation Mr. Stirone said he had with Mr. Rider. You will remember he says he went through that deal with Mr. Rider about whether he represented any of his laborers whether anybody worked for him and so forth. That's unusual enough but then he said, now this is an entirely legitimate deal. It's entirely above the table, there's nothing shady about this deal. He reassured, he told Rider five or six times, how legitimate it was.

Now, ladies and gentlemen, is that realistic? Does an honest man who is earning an honest commission say to the man he is going to represent, there's nothing shady about what I am doing for you. This is legitimate, this is an honest transaction. When you are dealing with somebody, do you say to them, "I am not shady, I am legitimate." If you are in business and somebody comes into you and they want to buy your service or want to buy

your merchandise, do you say to them, I am hones. there's nothing crooked about me, I am giving you value for your money, I wouldn't be in anything shady. You don't do that. That isn't the way that a man who has a clear conscience and feels that he is being honest acts.

Stirone tells you anyway that that's what he said. Then he says that Rider thought over the 50 cents. Did you notice that he fixed that 50 cents without ever asking Rider how much money he was getting for the concrete or how much profit he was getting, that he just said, my commission is 50 cents a cubic yard. He had never been in the business before, never had gotten a commission before. He just set a price, no negotiation, no questions, he didn't even know whether Rider was making 50 cents a cubic yard. So he says he called up Kassab. He said to Kassab, "Jake, do it as a favor to me." I have already commented about why a businessman would be willing to make that kind of a proposition.

So he says, Jake says, "Well, as long as the price is all right, why I'll do it." He says later on Jake called him back and says, "I want you to see if Rider can do the job," and Stirone, "I called him back after inquiring of Dierker and told him he could." So that Kassab says "All right, I will give you the job." And he says that occurred prior to September 6th, he says by September 6th the deal was all set, Rider had the job.

Now, you remember what Kassab said. Kassab says that when Rider came out to his house, he hadn't yet made up his mind. He still was speculating. He said something else. He didn't fix a date for that. He said the order of September 13th didn't mean that Rider had the contract. He hadn't made up his mind by that date, he says, yet Nicholas Stirone says Kassab called me up by the 6th and said, "Nick, I will give him the contract. Everything is all right."

Who is telling the truth? Is Kassab telling the truth

or is Stirone telling the truth? Kassab is Stirone's witness. Kassab says by the 13th I haven't decided. Stirone said and he said it not once, he said it a couple of times, he said to me, "I told you that by the 6th it was all over." Kassab says on the 13th he wasn't quite sure, although there was plenty of room for Mr. Rider to think he was sure.

Now, the issues are clear. Who are you going to believe? You've got two opposite versions. You have got what the Riders tell you, and you have got what Stirone tells you. You have to decide who to believe. I have pointed out to you that the Riders have no personal motives in this case, they have nothing to gain. They have nothing to gain whatsoever. They are not going to get one penny back of their $31,000 regardless of how you decide.

How about Stirone? Does he have an interest? Well, he is the defendant in the case. How about Dierker? Does Dierker have an interest? Is he a disinterested witness? Obviously Dierker is not a disinterested witness. First of all, he has shown all through this trial that he wants to curry the favor of Czar Nicholas. He trotted back here and talked about how he changed his recollection as to the William Penn. He wants to curry favor. He says, "I only employ twelve of his people." Well, that may be true. But he is in the construction business, he sells sand, he sells this slag that's used to make concrete, he mixes his own concrete. He's got a batching plant down here on Brady Street, he sells to contractors and Nicholas Stirone has a little bit of influence with contractors. You saw that for yourself.

So Dierker is hardly a disinterested witness. Dierker and Stirone had been in this thing together like two peas in a pod. Dierker was certainly Stirone's first assistant in this extortion. Dierker was certainly holding Stirone's hand during the whole thing and whether there was something more involved than just that, only Stirone and Dierker know.

Another way to tell which one to believe is whether they have been untruthful in their testimony. You know, when lawyers especially the older lawyers used to use Latin terms, they used those Latin terms so that the laymen couldn't figure out what they meant and they'd have to hire a lawyer. And they thought up one of them. Falsus in uno, falsus in omnibus. That means, false in one thing, false in everything, and in the law that means that if somebody tells you on the stand, tells you under oath a material matter which is not true, then you are entitled to conclude that everything that witness says might be untrue and you are entitled to disregard it. You are also entitled to consider that the Riders despite a persistent cross examination were not contradicted in anything they said except by the testimony of Stirone and by the testimony of his echo Dierker and that echo bounced all the way from the Carlton House over to the William Penn. Nothing Rider said was contradicted at all. He was cross examined most persistently. If he made up a story it would have been a bad one to make up because you put Dierker right there when everything happened.

Another thing to consider is the reasonableness of the testimony given and then also the demeanor of the witness on the stand. Now, in his opening Mr. Casey told you they had two defenses, it was a legitimate deal and alibi.

As to a legitimate deal their legitimate deal arises to the supreme heights of being the low influence peddler. What they say Stirone did is peddle his influence for 50 cents a square yard. That's per cubic yard. That's their defense. But look at the inconsistencies. I have pointed out some of them.

Stirone said, Mr. Casey said in his opening, that Dierker wanted a good tenant at his plant, he wanted Rider to be his tenant. That's why he wanted him to get

the contract. Rider had already signed a lease. He said Dierker was very interested in getting this contract. He wanted to sell the slag, he didn't want Dravo to sell the slag. Dravo was his competitor. You heard on the stand that Mr. Dierker knew he was going to sell the slag, regardless of which of the two bidders got the contract. So that wasn't the truth.

Then you were told that by August 27th, everybody knew who got the contract. Dierker obviously didn't. Then you were told that Mr. Rider had asker Mr. Dierker to put pressure on Pittsburgh Steel to get him this contract. Dierker when he was asked the question said, "Oh no, Rider never asked me to do that." Although it does raise one question: Why did Dierker if he had an in with Pittsburgh Steel, why didn't he use his influence with Pittsburgh Steel? Why didn't he say to Pittsburgh Steel, "You know Rider is going to be using our slag. This is your plant. Why don't you tell Ragnar-Benson to give the contract to Rider?" Why didn't he do that if he was so interested instead of taking him to Nick Stirone and getting him shaken down for 50 cents a cubic yard?

Now, what were the services rendered by Stirone? Well, he says he made two or three phone calls. He says he called Kassab or went to see Kassab once, called him again and assured him that the contract could be performed, could be serviced and also called Dierker once to see about it.

$31,000 is a pretty good pay for that sort of thing, I would think, for those three phone calls, and he says it was all over by the 6th.

You remember Kassab? Kassab says on the 19th or the 20th, as I recall, "I called up Mr. Rider and confirmed the order." He says, "On the 13th I wasn't sure." Remember Stirone's alibi? His alibi is that he left, he says he left for San Francisco on the 8th or 9th, again with that certainty, but he didn't, he left on the 10th, he was gone to the 20th.

His alibi puts him out of town, his alibi puts him out of town on the 13th when Kassab hadn't made up his mind yet as to who was going to get that ready-mixed concrete contract, he was in San Francisco observing a meeting of the A.F. of L. which hadn't even started yet, it didn't start until the 17th. He went out a week ahead of time to observe it, I think he went to some other kind of meeting beforehand, never did stay for this meeting. But he was out of town on the 13th. Kassab was undetermined on the 13th. He was still thinking maybe of batching it himself, although Rider had no way to know that. He didn't get back until the 20th, and by the 20th Kassab said he had confirmed the order to Rider.

So what did Stirone do for Rider? Nothing? What did he do? The only thing he did is, he interceded, he called up Kassab. Well sure, he called up Kassab. He was interested in Rider getting the contract. Kassab tells you that Stirone called him up. He would, he wanted to shake Rider down. The only way he was going to shake Rider down was if Rider got the contract. So naturally he had an interest in it. How and why you have heard the relations between Dierker and Stirone.

Now, the alibi effort, that fell flat as anything, although we heard great futures about how he was not here when the thing occurred, he got back in town on the 20th. Sometime between the 13th and the day after the 25th when the notice came is when that meeting took place. Since Stirone was out of town until the 20th, it is obvious that the meeting between Rider and Nicholas Stirone and Dierker out at Belle Vernon must have occurred between the 20th and a few days after the 25th, that is when it must have happened. Nobody can give any dates. The only one that can give any dates is Mr. Stirone and his date is so illogical you can't believe it, particularly in view of the fact he tells you the contract was awarded on the 6th and his own witness contradicts him. In fact, nobody

confirms anything he says and everything that he said so far in this trial that can be tied down is wrong. The only thing that hasn't been wrong is when he was born and we can't confirm that right now.

Look at the attack on the Riders. We are told that we threw smoke in your eyes by bringing in Doherty. The Doherty case had a logical reason for coming in here. It shows the design, scheme, the plan, the method of operation. So does Hawthorne.

What does the bankruptcy of Rider have to do with this? Just what does that have to do with it? It is like a person entering your home and stealing your television set, and when he is caught, he says, "Hey, you still owe money on the television set." That's exactly all the defense amounts to.

He says Mr. Rider says, "Stirone put me in bankruptcy." Mr. Rider never said that. Rider never mentioned it in his direct testimony. Mr. Casey asked him in cross examination, "Do you say that Stirone put you in bankruptcy?" And he says partially. Well, certainly the loss of $35,000 partially contributed to his bankruptcy and when they mention the $750,000, that's not a right figure. When you look at the record, you will know it is not a right figure because it represents primarily secured claims and what's a secured claim? That's when you bought a piece of equipment and have a chattel mortage on it, some other security for their debt. So the bankruptcy was nowhere near that.

Who threw him in bankruptcy? Duquesne Slag for $38,000. That's why he was thrown into bankruptcy and two smaller creditors. The $34,000 would have paid off Duquesne Slag almost completely. So did it contribute to his bankruptcy? You bet your life it contributed to his bankruptcy, and that's all he said.

So that little inquiry by Mr. Casey gave him the right to make all those long accusations that Mr. Rider was out

of town every week end, that Mr. Rider didn't take care of his business, he called him a playboy. He got into gambling activities. Now, what difference does that possibly make? If Mr. Rider was a bad businessman, he didn't have any right to extort money from him. If Mr. Rider was a playboy, and I say there is no evidence he is, you don't have any right to extort money. Whatever else might have gone wrong in Mr. Rider's business dealings, you have no right to extort money and that is the issue. And who is throwing smoke? Who is trying to make this into a trial of Rider? The defense is trying to. They tried to make it a trial of me. In one case they didn't even like the demeanor of the judge on the bench. They have attacked everybody.

MR. CASEY: Now if the Court please, I think there ought to be argument upon the facts. I have sat here and heard "Czar" and inflammatory remarks. I repudiate my agreement if I have to do this.

MR. TEITELBAUM: I thought that would happen.

THE COURT: Now—

MR. CASEY: I'd like to ask anybody else if you thought it would happen. You are doing too much thinking now.

THE COURT: Now:

MR. CASEY: Besides that, I want to call the Court's attention to the $760,000, that it was the value of the contract.

MR. TEITELBAUM: This is awful, Your Honor.

THE COURT: Mr. Casey, it's up to the jury to evaluate the facts. If there is any misquoting of the facts by either counsel, it's not your recollection, it's not Mr. Teitelbaum's recollection, but it's the recollection of the members of the jury as to what the facts are.

MR. TEITELBAUM: You will recall that's exactly what I told you when I started out. Please take your own recollection, if I said anything contrary to what you remember. It makes it difficult to argue, of course, when you are interrupted.

MR. Casey: Well, I apologize for interrupting. I held myself as long as I could and listened to unjust accusations.

MR. TEITELBAUM:
I think that the marshal ought to be called.

THE COURT: Mr. Casey, that's enough.

MR. TEITELBAUM:
In addition to all these wild claims about Mr. Rider being a playboy, being a bad business man, everything else that could have no possible connection with the case, look what else happened. Look at the vicious, unfounded, unjustified inferences that were raised about Mr. and Mrs. Rider's marital status, just consider those. Here's a man who married a woman who had a sixteen-year old daughter, a man who adopted that sixteen-year old daughter, a man who supported her. A woman who kept the entire books of his business in her own hand, not all of them, she had some assistance, but her devotion to her husband's cause is clear too.

Yet all sorts of innuendos were raised, even to the extent of asking what the period of appeal is after a divorce is granted in the State of Pennsylvania. Can you imagine making that kind of an innuendo in the midst of a law suit under the guise that you are checking the credibility of a witness?

Then the big story was told you Mr. Rider invested money in an apartment building and that apartment building wasn't successful. Now, just what is the implication from that? An innuendo was raised from the fact that when Mr. Rider got married he put his wife's name on the property. Now, if there is anything unusual about a

man when he gets married joining his wife's name along with his own on his property, I just don't know what that inference is and especially when there is nothing to indicate that Mr. Rider was insolvent at that time. The only evidence is that Mr. Myers on the stand said he was paying his bills pretty good up until the time when he met Nicholas Stirone.

Now, Mr. and Mrs. Rider were trying to answer the questions as honestly as they could while they were on the stand. Mr. Casey harassed them, he tried to embarrass them, but I think that you have the impression that those two people were trying under trying circumstances to tell you what happened, to the best of their recollection.

Now, let's remember, if you will for a moment, when the defendant got on the stand. Remember his arrogance. Remember how he said, "If it will please your ego, I will answer your question." The judge ruled that it was a proper question. Remember how he continually said, "For your information," until I asked, Please, for the information of the jury.

Remember how he got on that stand and gave a pat story under direct examination by Mr. Casey. Remember that he went back to 1917 and he gave you times and dates and places where he worked and what he did and how much he earned. Excellent memory. Remember, I said to him, "Did you come to Pittsburgh sometime in January of '52?" And he says, "I come sometime in January"—excuse me,

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Exhibit No. 10 (Purchase Order.)

RAGNAR BENSON, INC.
Engineers and Builders
239 Fourth Avenue
Pittsburgh 22, Pennsylvania

Job JK-1446
New 66" Hot Strip Mill
Pittsburgh Steel Company

Purchase Order
No. 1446-7

Ship to Ragnar Benson Inc.
C/o Pittsburgh Steel Company
Allenport Works
Allenport, Pennsylvania

The individual corporation or otherwise to whom this order is issued expressly agrees to accept the following conditions:

(1) The seller hereby agrees to indemnify and save harmless RAGNAR BENSON, INC., from all loss, costs, damage or expense by reason of infringement of any United States Letter Patent covering article purchased hereunder.

(2) If unable to fulfill any or all portions of work covered by this order notify us at once.

(3) Payments will be made by vouchers only. Drafts will not be honored.

(4) The seller specifically agrees that where labor is covered by this order said labor shall be fully covered

Exhibit No. 10 (Purchase Order.)

with Liability Insurance in accordance with State Laws and seller shall save harmless RAGNAR BENSON, INC., from any action arising by reason of injury or death to said labor.

(5) RAGNAR BENSON, INC., reserves the right to cancel all or any part of this order if not filled within the specified time.

SIGN AND RETURN DUPLICATE COPY OF THIS ORDER AT ONCE.

Pittsburgh, Pa. September 25, 1951

To RIDER SUPPLY COMPANY Charleroi 3-6311
Monongahela Avenue at Lock No. 4
Charleroi, Pennsylvania

This is your authority to furnish and deliver to project noted, TRANSIT READY-MIX CONCRETE as required. Slag aggregate concrete to meet requirements of ASTM Specification C-94-44. (To develop 3000# fc at 28 days)

Price—$11.75 per cu. yd.
FOB: Delivered to job site.
TERMS: 2% 15th Prox

"D.O. U-4 Certified Under CMP Regulation 6"

Invoice in 4 copies to 239 Fourth Avenue, Pittsburgh 22, Pa.

Price listed herein includes all taxes applicable whether Federal, State, City or others not mentioned

Exhibit No. 10 (Purchase Order.)

s/ Robert Ong
(Authorized Representative)

VENDOR WILL INDEMNIFY, SAVE HARMLESS AND DEFEND BUYER FROM ALL LIABILITY FOR LOSS, DAMAGE OR INJURY TO PERSON OR PROPERTY IN ANY MANNER ARISING OUT OF OR INCIDENT TO PERFORMANCE OF THIS ORDER AND WILL FURNISH BUYER WITH PROPER EVIDENCE THAT SELLER IS INSURED AGAINST SUCH LIABILITY. SELLER WILL INDEMNIFY, SAVE HARMLESS AND DEFEND BUYER FROM ANY AND ALL CLAIMS, DEMANDS OR SUITS MADE OR BROUGHT AGAINST BUYER ON ACCOUNT OF ANY OF THE TERMS OR PROVISIONS OF ANY APPLICABLE WORKMEN'S COMPENSATION LAW AND WILL FURNISH BUYER WITH THE PROPER EVIDENCE THAT CONTRACTOR IS INSURED AGAINST ALL LIABILITY MADE UNDER SUCH LAW. (Furnish Certificates of Insurance in 5 copies)

ALL materials to meet with the approval of the owners.

RAGNAR BENSON, INC.

By Robert Ong
(for J. G. Kassab, Vice President)

Accepted:
/s/ W. G. Rider, owner
R. Ong.

WEDNESDAY MORNING

June 5, 1957
10:30 a.m

THE COURT: You may open.

MR. TEITELBAUM: If it please the Court, Mr. Paletta will open for the Government.

MR. PALETTA: May it please the Court, and ladies and gentlemen of the jury, at this time it is the duty of Mr. Teitelbaum, my colleague in this case and myself to present to you the case of the United States of America vs. Nicholas A. Stirone. The defendant, Nicholas Stirone, has been charged by a Federal Grand Jury with a violation of Title 18 of the United States Criminal Code, Section 1951.

MR. CASEY: If the Court please, I object immediately to the opening statement. It is not the function of the Federal Grand Jury to charge anyone, but there's only sufficient evidence upon which a reasonable ground or cause—

MR. TEITELBAUM: If it please the Court, the indictment of the Grand Jury so charges.

THE COURT: That is the wording of the indictment.

MR. CASEY: I object to the use of the word "charged" as not being within the function of the Grand Jury. They only pass upon the prima facieness of the evidence.

THE COURT: That's the fact. There isn't any question about it. That's the wording of the indictment. Proceed, Mr. Paletta.

MR. PALETTA: Thank you, Your Honor. Now, ladies and gentlemen of the jury, the act with

which Mr. Stirone is charged with violating is commonly known as the Hobbs Act. This is an Act which deals with any interference to interstate commerce by threats or violence. Now, the formal indictment in this case is a six-paragraph indictment and the indictment charges the following;

Substantially Paragraph 1 states that the movement of material and supplies between states for the making of ready-mixed concrete to be used in the erection of a steel processing plant constitutes interstate commerce.

The second paragraph substantially states that William Rider, the victim in this case, was a party to a contract to supply ready-mixed concrete for the erection of a steel processing plant at Allenport, Pennsylvania, and in the course of the fulfillment of this contract, caused material and supplies to move in interstate commerce.

Third. The next paragraph substantially states that Nicholas A. Stirone during the times relevant in this indictment, was president of Local 1058 of the International Hod Carriers, Building and Common Laborers' Union. He was also president of the Heavy Engineering Railroad Contracting and Highway Construction Council of the American Federation of Labor. He was also president of the Laborers' District Council of Western Pennsylvania.

The fourth paragraph substantially states that Nicholas Stirone unlawfully interfered with interstate commerce in the Western District of Pennsylvania from about March of 1951 to about December of 1953 by the extortion of $31,274.13 from William G. Rider and that William G. Rider was induced to part with this money through fear of the wrongful use of labor disputes and through fear of the loss of his contract

to supply this ready-mixed concrete which I described above in Paragraph 2.

Now, the fifth paragraph then goes to spell out that Nicholas Stirone threatened and that he caused this William Rider to fear that the preparation and delivery of this ready-mixed concrete would be delayed or altogether prevented if his demands weren't met.

And the last paragraph, the sixth one, substantially charges that Nicholas Stirone threatened the oppressive action regarding the movement of material and supplies for the manufacture of ready-made concrete if his demands weren't met.

Now, these are the six paragraphs of the indictment. This is the formal indictment which was returned by the Grand Jury. Now simply what the Government has to prove to boil it down into simple language and what we intend to show is that a powerful labor leader, Nicholas Stirone, shook down a concrete supplier, William Rider, to the tune of about $31,000 and that this contractor, William Rider, was engaged in a business which affected interstate commerce. It boils right down to that.

Now, how does the Government intend to go about proving this indictment? We are going to prove this indictment beyond any reasonable doubt, ladies and gentlemen of the jury, in five steps. We are going to bring witnesses up here to the witness stand and you are going to see witnesses construct each and every one of these steps which are going to be constructed for your benefit to march along with.

Now, let's take the first step that's going to be constructed. We are going to use four witnesses to construct that first step. In this first step, we are going to show the concrete influence of Nicholas Stirone in Western Pennsylvania as a labor leader.

We are going to show that when Nicholas Stirone spoke, it wasn't a small still voice in the night that was speaking. We are going to show that it was a powerful influential man who didn't have to draw pictures for somebody.

We are going to do this, ladies and gentlemen of the jury, as I pointed out, through four witnesses. We are going to put on the stand an employee of the National Labor Relations Board who is going to produce documents showing Mr. Stirone's position in labor in Western Pennsylvania. We are going to put on the stand a representative of the Master Builders' Association of Pennsylvania. We are going to show the head of the Constructors Association of Pennsylvania. He is going to testify as to negotiations and as to dealings with Mr. Stirone and then we are going to put on Mr. Joseph Moreschi, the international president, the head, the national head of the Hod Carriers' Union. That will be your first step. We are going to show who Mr. Stirone was.

Next, get down to the second step. As we pointed out, this is the Hobbs Act and we have to show that there was some interference with interstate commerce before the Federal Government can step in, so we have got to show interstate commerce.

So the second step is going to show interstate commerce. We are going to have six witnesses. We are going to show you the broad footprint of interstate commerce in this case. We are going to show that there were plans for the erection of a steel processing plant at Allenport, Pa. This plant was to belong to the Pittsburgh Steel Company.

We are going to bring on the witness stand a representative of the Pittsburgh Steel Company. We are going to show you the proposal that he received from the prime contractor on the job. We are going

to show the documents sent back, the negotiations for the actual erection of the plant. We are going to show the plant was erected. We are then going to show that the prime contractor, Ragnar Benson, Incorporated, who was to build this plant, purchased their concrete from Rider, the Rider Supply Company, and then we are going to go back to show that the contract which Mr. Rider supplied to Ragnar Benson, the contractor who was erecting the plant, was made from sand, slag and cement, component parts.

So we are going to go ahead and show where the sand which went to make up this concrete was purchased. We are going to show it was purchased from the Duquesne Slag Company. We will have an officer of the Duquesne Slag Company with documents showing his purchase of this particular material. We are going to show where he bought his material and we are going to show how he received this material.

We are going to show that he or that is the company, purchased the sand from the Duquesne Sand Company. We are going to show that the Duquesne Sand Company sold substantially all the sand that they sold to this one company, Duquesne Slag and the Duquesne Slag bought about ninety per cent of the sand that they used '51 and '53 from the Duquesne Sand Company.

We are going to show where Duquesne Sand Company got the sand. We are going to show that the sand was dredged on the Ohio River in West Virginia. There was one boat that was doing the dredging, the Admiral. The Admiral was sailing the waters of the Ohio River dredging this sand in West Virginia and after the sand was dredged, Corps of Engineers' records will show where the sand was dredged, the location of the Admiral.

We will then show the transport of this sand by Crain Brothers and we will have Mr. Clifford Crain of Crain Brothers with documents to show the transport of sand to the Duquesne Slag Company and there you see this chain being forged link by link and you have your interstate commerce, your second step.

So now you have Step 1, your labor leader. Step 2, you have your interstate commerce. Now we get to step 3.

We are going to have two witnesses for you in Step 3. This step is the keystone of this whole stairway that we are constructing here. It is the crux of the case. We are going to put on the witness stand William Rider, the victim in this case. Mr. Rider will take the stand and he will testify to the fact that in late summer or early fall of 1951, he was supplying concrete to the Eichleay Company at Monessen which was working in one of the Pittsburgh Steel plants there.

We will show you he learned at that time that Pittsburgh Steel Company was preparing to construct a plant at Allenport. He was desirous, of course, of fostering his business and selling the concrete to this new plant that was being constructed and he learned that the prime contractor, the person who was going to do the construction of the plant, was this company, Ragnar Benson Company.

We are going to show how he got in contact, how he contacted Ragnar Benson Company, requested certain details regarding the proposal for bids. We are going to show that he made a bid to Ragnar-Benson Company. We are going to show that there was an oral acceptance of the bid, which is a custom of the trade in this business and later on, a purchase order, a formal written document confirming this earlier oral acceptance, was given. We are going to

show this all took place before the next phase of the testimony, that in the fall of 1951 one day he received a call at his office from a Mr. Robert Dierker. Mr. Dierker is the president of the Duquesne Slag Company.

The Duquesne Slag Company we are going to show is the company also that owned the ground, it owned the land and the equipment where Mr. Rider batched his concrete. He had a batching plant on the ground of the land of the Duquesne Slag Company. There he mixed the sand, the slag and the cement to make his concrete and the president of that company was Mr. Dierker and the plant was located at Belle Vernon, Pa.

We are going to show this one day while Mr. Rider is in his office, he receives this telephone call from Mr. Dierker. Mr. Dierker says, "There's somebody that wants to see you. Would you come to the batching plant? I want you to meet somebody."

So Mr. Rider goes and there in an automobile Mr. Dierker introduces him to Mr. Nicholas Stirone. At this time we are going to show that Nicholas Stirone, the defendant in this case, told Mr. Rider that he knew Rider had the contract to supply the ready-mixed concrete for Ragnar Benson in the erection of this steel processing plant at Allenport and that he wanted fifty cents a cubic yard for every yard of concrete that was supplied. Mr. Rider objected and at this time, think of Step 1. Pictures didn't have to be drawn and we are going to show he knew at this time who Mr. Stirone was. He objected. Mr. Stirone told him, "If I don't get 50 cents a cubic yard, I will see to it that you don't hold this contract to supply the ready-mixed concrete."

We are going to show that Mr. Rider started to walk away. Mr. Dierker was there. There was some

discussion had that he just had to go along with this proposition, perhaps some adjustment could be made on the sand and slag that was being sold to Mr. Rider. Finally, Mr. Rider realized that he had this investment in the batching plant, he had to have that contract because he wanted to get other work in the construction field at that time; finally determined to go along with the deal.

Regarding the manner of payment, we are going to show that Mr. Stirone wanted payment in cash. At this time definitely Mr. Dierker put his foot down and said, "Absolutely not, if I do have to pay the money it's going to go through my book and listed as an expense." Remember. By listing as an expense, it could be deducted as an income tax deduction and we are going to show then that that's exactly how it was listed on the books as commissions. We are going to show that payments were made by check by a series of checks all through '52 and all through '53.

We are going to show that a total of $31,274 was paid by check and you will note that towards the end of the contract, Mr. Rider had fallen behind in his payments and he still owed Nicholas Stirone $1,400. As he points out, he was being hounded for the $1,400.

He will testify the moment he went into bankruptcy and this was one of the contributing factors, he will state, one of the contributing factors that drove him into bankruptcy, he will state once he did go into bankruptcy, there was no further demand made upon him for the money, this extra $1,400.

Now think of the next step. I will get to that in a moment. First, I want to bring up one other witness and that is Mrs. Rider. Mrs. Rider was the bookkeeper for Mr. Rider. She was present at the office when Mr. Rider came back from this conver-

sation at Belle Vernon at which Mr. Dierker and Nicholas Stirone, the defendant, were present and he told her we are going to have to pay Nicholas Stirone 50 cents for every cubic yard of concrete that we deliver to the Allenport plant.

You can understand—you wait until you see the testimony or hear the testimony of Mrs. Rider, the explanation that had to be given, the normal explanation goes through everybody's mind—why? We are going to show his words, he had to explain to her, I can't hold the contract otherwise.

Now, she being the bookkeeper, it was her job to take care of this payment on the books. She will explain how she floundered and thought we will call it commissions. We will list it as commissions. She started then writing these checks each and every month. The checks were based upon the total cubic yards of concrete delivered that month, 50 cents per cubic yard and the checks were made out. She will testify that the checks were sent out, sent to Mr. Stirone's residence, Bigelow Apartments, some of them were sent to the Waldorf Astoria Hotel in New York, some were sent down to Florida, various places.

She will further testify that at times she fell behind in her payments. Calls would come to Mr. Rider, calls would come to Mrs. Rider, calls would come from Mr. Stirone and calls would also come from Mr. Robert Dierker, the man who was present that day, inquiring as to the delay in the payment of these moneys.

Now we get to the next step, the fifth step. I told you to keep this step in mind. Remember I told you he owed him $1,400. The fifth step is going to be records of the referee in bankruptcy and the receiver in bankruptcy. We are going to put those people on the witness stand with their records and those records

will show claims put forth by creditors of Mr. Stirone, people to whom Stirone owed money. —I am sorry, people to whom Mr. Rider owed money. Excuse me for using the word Mr. Stirone. The bankruptcy was that of Mr. Rider, he went into bankruptcy and naturally when you go into bankruptcy, your creditors come and put their claims forth.

We will show you—you can search those records —you won't find any claim in those records put forth by Mr. Stirone for his $1,400 and lastly, ladies and gentlemen of the jury, the fifth step in this case will be to show that this was not an isolated instance.

We are going to show that this was a pattern of conduct on the part of Mr. Stirone. Other instances will be brought to your attention. You will hear other testimony, ladies and gentlemen of the jury. You will know the Government, having constructed these five steps for you, will have presented its entire case for your consideration, at which time you can retire to deliberate, walk up these steps and reach a just verdict in the case. Thank you, ladies and gentlemen.

LE COPY

FEB 24 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1958.

No. [redacted] 57

UNITED STATES OF AMERICA

v.

NICHOLAS A. STIRONE,

Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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v.

NICHOLAS A. STIRONE,

Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit affirming the judgment of the United States District Court for the Eastern District of Pennsylvania which had adjudged petitioner guilty of violating the Hobbs Act.

OPINIONS BELOW.

The Opinion of the District Court has not yet been reported. It appears at page 304a of Appellant's Appendix in the Court of Appeals. The following opinions of the Court of Appeals have not yet been reported, but appear where respectively indicated in the Appendix to this petition:

Opinion of the Court of Appeals affirming conviction (Appendix A);

Dissenting Opinion of Circuit Judge Hastie (Appendix B);

Per Curiam Opinion of the Court of Appeals denying petition for re-hearing (Appendix D);

Opinion of Chief Judge Biggs (in which Judge Hastie joined) dissenting from order denying re-hearing (Appendix E).[1]

JURISDICTION.

The judgment of the Court of Appeals was entered on December 9, 1958. On December 15, 1958 the time for filing a petition for re-hearing was extended to January 9, 1959. The petition for re-hearing was filed on January 5, 1959 and was denied on January 27, 1959. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1) and Rule 22(2).

QUESTIONS PRESENTED.

1. Can a conviction stand where the court below applied the Hobbs Act [2] as though the federal courts have jurisdiction over every extortion or robbery from any victim whose local business uses or has used the channels of interstate commerce?

2. Can a conviction under the Hobbs Act [2] stand when the extortion victim was a local manufacturer of concrete whose only connection with interstate commerce was that he bought sand from a local vendor who obtained the sand from another state and delivered it to victim?

---

1. The judgment of the Court of Appeals affirming the judgment of the District Court appears as Appendix C. The order of the Court of Appeals denying re-hearing appears as Appendix F.

2. 18 U. S. C. § 1951.

3. Was due process violated because petitioner was indicted on a charge of obstructing the receipt from another state of sand for use in making concrete at a concrete manufacturing plant, but the trial judge permitted the jury to convict him of a different charge for which he was never indicted, namely obstructing the shipment of steel to other states from a steel mill to be constructed partly out of such concrete?

4. Was petitioner's conviction under the Hobbs Act[3] sufficiently supported by evidence that the extortion victim, a local concrete manufacturer, delivered concrete to a local contractor for use in erecting a steel plant which when built would ship steel in interstate commerce?

CONSTITUTIONAL, STATUTORY AND PROCEDURAL RULES PROVISIONS INVOLVED.

The following constitutional, statutory and procedural rules provisions are relevant:

1. United States Constitution, Amendment V: ". . . nor (shall any person) be deprived of life, liberty, or property, without due process of law; . . ."

2. United States Constitution, Article I, Section 8, Clause 3: "The Congress shall have power * * * To regulate Commerce with foreign Nations and among the several States, and with the Indian Tribes."

3. Hobbs Act, 18 U. S. C. § 1951(a): "Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both."

3. 18 U. S. C. § 1951.

STATEMENT OF THE CASE.

The jurisdiction of the District Court was invoked because petitioner was charged under a law relating to commerce, the Hobbs Act.

Petitioner was found guilty by a jury in the District Court for the Western District of Pennsylvania on the only count of an indictment charging him with having obstructed, delayed and affected interstate commerce by extortion (R. 7a). He was sentenced to imprisonment for three years and was directed to pay a fine of $5,000.

We draw our recital of the facts from certain paragraphs of the Opinion of the Court of Appeals affirming the judgment of the District Court, as follows:

> "Defendant, a labor union official, was alleged to have extorted money from a man named William G. Rider who was in the business of supplying ready-mixed concrete. The Government's version of the facts, accepted by the jury, was that the defendant had come to Rider, following Rider's entering into a profitable contract to supply mixed concrete for the construction of a steel mill in Allenport, Pennsylvania, and that he had threatened Rider with the loss of that contract if he did not give the defendant fifty cents a cubic yard for all concrete furnished for this job." (Appendix A, *infra*, pp. 15, 16.)

> "In making this ready-mixed concrete Rider bought sand which was pumped out of the Ohio River in Ohio, West Virginia or both. The Duquesne Sand Company, which pumped the sand from the river, sold it to Duquesne Slag Products Company. It was on Slag Products Company's land that Rider's operations for the contract mentioned were being carried on. It is sufficient to point out, to settle this part of the case, that some of the barges of sand were brought into

Pennsylvania, consigned to Rider and unloaded by him at the place where his work was being carried on. This sand came from outside Pennsylvania. Whether it was consigned directly to Rider or was consigned to Duquesne Slag but delivered to Rider does not matter." (Appendix A, *infra*, p. 16.)

"During the course of the trial a witness from the steel company whose plant was being built at Allenport gave evidence that when the steel mill was completed it would ship much of its product out of the state of Pennsylvania, notably to Michigan and Kentucky. The court, in its charge, told the jury that if it was satisfied 'that Mr. Rider's concrete was used for constructing a mill which would manufacture articles of steel to be shipped in interstate commerce' and if they believed the defendant extorted money from Mr. Rider they were instructed 'as a matter of law that there has been a substantial effect on interstate commerce shown by the United States.'" (Appendix A, *infra*, p. 17.)

"As said above, the indictment charged interference with interstate commerce on the receiving, not the sending end, except by stating that the sand was for a steel mill." (Appendix A, *infra*, p. 17.)

REASONS FOR GRANTING THE WRIT.

1. The Question of How Directly Extortion or Robbery Must Affect Interstate Commerce in Order to Be Covered by the Hobbs Act Has Not Been, But Should Be, Settled by This Court.

Both the Opinion of the court below and the dissenting Opinion (Appendices A and B, *infra*, pages 18 and 24) agree that this case presents the following question:

> "Is an interference with a man who is furnishing material for a mill which, when completed, will manufacture products which, if successfully marketed, will be shipped out of the state close enough to interstate commerce to be made a federal offense?"

To this question Circuit Judges Goodrich and Staley gave affirmative answer (Appendix A), while Circuit Judge Hastie dissented (Appendix B). On petition for re-hearing, Circuit Judge McLaughlin joined the majority (Appendix D), while Chief Judge Biggs wrote a dissenting opinion in which Circuit Judge Hastie joined (Appendix E).

The case comes before this Court as one of first impression raising the highly important question of whether the Hobbs Act has opened the doors of the Federal Courts to virtually every extortion or robbery case which a United States Attorney may choose to bring. This Court has never considered that question. But it should be considered. It is hard to think of a robbery or extortion which might not have an effect, however slight, upon interstate commerce. Yet it is doubtful that Congress did, or probably could, intend by the Hobbs Act to assume sweeping jurisdiction over those crimes where their interstate effect is remote.

2. The Question of How Directly Extortion or Robbery Must Affect Interstate Commerce in Order to Be Covered by the Hobbs Act Was Answered Incorrectly by the Courts Below.

The trial judge told the jury that the necessary effect upon interstate commerce was present if the jury believed either one of two things: first, the evidence with regard to the receipt of sand for use in making the concrete, or, second, the evidence with regard to the future shipment of steel products from the steel mill (R. 287a, 288a).

We submit that both of these two bases were too remote in their connection with interstate commerce. If we are right as to both the sand or concrete and the steel, the Constitution requires judgment of acquittal. If we are correct as to the steel, but incorrect as to the sand or concrete, the Constitution requires a new trial.

With regard to the steel, we cannot improve upon the language of Chief Judge Biggs (in which Circuit Judge Hastie joined) dissenting from the order denying the petition for rehearing. Chief Judge Biggs said (Appendix E, *infra*, p. 30).

> "I am also in accord with the views expressed in Judge Hastie's dissenting opinion. The statute is extended unreasonably to embrace interference with prospective distribution of steel from a factory in course of construction. The Allenport plant of the Pittsburgh Steel Company is not and was not a facility in interstate commerce. Cf. Mitchell v. Vollmer & Co., 349 U. S. 427 (1955); Archer v. Brown & Root, Inc., 241 F. 2d 663, 669 (5 Cir. 1957)."

With regard to the sand or concrete, we cannot improve upon the language of Circuit Judge Hastie in his Opinion dissenting from the judgment of the court. As demonstrated above, Chief Judge Biggs later expressed agreement

with the dissenting Opinion of Circuit Judge Hastie, which we quote as follows (Appendix B, *infra*, p. 26):

> "In addition to this difficulty of affecting commerce not yet begun, the present case presents a second speculative factor. The extortionate threat was made against a local supplier of mixed concrete. It is entirely speculative whether or not preventing this single materialman from furnishing mixed concrete on the construction job he was serving would have affected even future interstate commerce. Were there other materialmen ready and anxious to supply without delay the concrete needed for the job? The record tells us nothing."

Not everything which affects interstate commerce is within the power and control of Congress. If the effect upon interstate commerce of a robbery or extortion is merely indirect or remote, then the offense is not within congressional power, and there is no jurisdiction in the Federal Court.

Much has been written concerning the congressional control of commerce, and the fundamental and guiding principles have not varied too much since the adoption of the Constitution.

The scope of congressional control over commerce is undoubtedly broad, extending as it does, not only to transactions which can be deemed to be essential parts of a flow of interstate commerce but also to activities intrastate in character which are possessed of a close and substantial relation to interstate commerce, *Fairway Foods Inc. v. Fairway Markets Inc., et al.*, 227 F. 2d 193, 9th Cir. But there is a limitation because of our dual system upon this congressional power, and this limitation has been very well defined by your Honorable Court in the case of *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 57 S. Ct. 615 wherein it is said:

> "The scope of this power must be considered in the light of our dual system of Government and may

not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government."

The effect of the decision in the present case is to reject and point toward abolition of dual government under the Constitution.

Whether Congress is justified in regulating an intrastate or local activity which might affect interstate commerce was fully considered by your Honorable Court in the case of *Schechter Poultry Corp. v. U. S.*, 295 U. S. 495, 25 S. Ct. 837, in which the Court said:

> "In determining how far the federal government may go in controlling intrastate transactions upon the ground that they 'affect' interstate commerce, there is a necessary and well-established distinction between direct and indirect effects. The precise line can be drawn only as individual cases arise, but the distinction is clear in principle. * * * But where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain the domain of state power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people, and the authority of the state over its domestic concerns would exist only by sufferance of the federal government."

We submit that the facts in this case do not bring it within the congressional power, and that the lower court and the majority of the Court of Appeals were in error in deciding that the Hobbs Act applied because the channels of interstate commerce had at some time been used by the

local concrete manufacturer, and might at some future time be used by the steel mill. The lower court and the majority of the Court of Appeals disregarded fundamental constitutional principles relating to interstate commerce laid down many times by the United States Supreme Court.

3. The Decisions of the Courts Below Directly Conflict With DeJonge v. Oregon, 299 U. S. 353, 362, 57 S. Ct. 255.

At page 362 of *DeJonge v. Oregon*, 299 U. S. 353, 57 S. Ct. 255, this Court said that "Conviction upon a charge not made would be sheer denial of due process."

In the present case sand had been brought from other states to Pennsylvania where it was used to make concrete for a Pennsylvania steel mill which would manufacture articles of steel to be sent out into interstate commerce. As the Opinion of the court below concedes (Appendix A, *infra*, p. 17), the indictment charged interference with interstate commerce on the receiving end of the sand rather than interference with the sending of the steel products from the steel mill into interstate commerce.

However, the trial judge instructed the jury that the necessary interference with interstate commerce could be found *either* on the basis of interference with receipt of the sand *or* on the basis of interference with the eventual sending out of steel products (R. 287a, 288a).

The Hobbs Act prohibits the obstruction of interstate commerce by means of extortion. The obstruction of commerce is the very essence of the offense. We say that a conviction could not constitutionally be predicated upon an obstruction which was not charged in the indictment.

What the trial judge did was permit petitioner to be tried on a charge for which he was never indicted. As the opinion of Chief Judge Biggs (in which Circuit Judge Hastie joined) dissenting from the order denying rehearing said (Appendix E, *infra*, p. 30):

> "Stirone was therefore tried on two charges. One, obstruction of the receipt of sand, and two, inter-

> ference with delivery of steel from a plant not yet built. The first charge was laid in the indictment. The second was not."

No one can tell on which of these two charges the jury based its guilty verdict. The basis may well have been the charge for which petitioner had not been indicted.

The Opinion of the Court of Appeals affirming the conviction cites *Berger v. United States*, 295 U. S. 78, 55 S. Ct. 629 and says the variance was harmless (Appendix A, *infra*, pp. 17, 18).

But as the dissenting Opinion of Chief Judge Biggs says (Appendix E, *infra*, p. 30):

> "The doctrine of Berger v. United States, 295 U. S. 78, 81 (1935) cannot cure the error. It is clear in Berger that the crime for which Berger was convicted was within the words of the indictment, see 295 U. S. at pp. 81-83: the objection here is that the allegations of the indictment do not charge the crime for which Stirone was convicted."

Indeed this Court laid down the law in *Berger v. U. S.*, *supra*, as follows:

> "The true inquiry, therefore, is not whether there has been such a variance as to 'affect the substantial rights' of the accused. The general rule that allegations and proof must correspond is based upon the obvious requirements (1) that the accused shall be definitely informed as to the charges against him, so that he may be enabled to present his defense and not be taken by surprise by the evidence offered at the trial; and (2) that he may be protected against another prosecution for the same offense."

If either of the two requirements of the *Berger* case have not been met, conviction in the present case cannot stand.

First, we inquire whether the variance was such as to deprive petitioner of his protection against another prosecution for the offense of having obstructed the sending out of the steel products into interstate commerce. It certainly would not. As the Court of Appeals for the Third Circuit said at page 130 of *U. S. v. Kenny*, 236 F. 2d 128:

> "Where the state charges an accused with two related offenses, an acquittal of one precludes subsequent prosecution on the other, if that acquittal was the result of decision in favor of the defendant on an issue which would be essential to the case against him on the second charge."

If Stirone had been acquitted, it would have been impossible to say whether or not the acquittal resulted from a decision in his favor on the issue of whether he obstructed the shipment of the steel products.[4] The verdict should have been not guilty as charged. That kind of obstruction was not charged in the indictment.

Second, we say that the other requirement of the *Berger* case has not been met, i.e., the requirement that the accused be definitely informed as to the charges against him, so that he may present his defense and not be taken by surprise.

Where a name is misspelled in an indictment, or where an incorrect dollar amount is cited for the value of stolen property, a variance between allegata and probata does not mean the defendant has not been sufficiently informed as to the charges against him. But the present case is different. In the present case, petitioner was charged with obstructing the receipt of sand in interstate commerce and was con-

4. On the other hand, it cannot be said that Stirone's conviction was based on an obstruction of the shipment of steel products.

It may have been based on the alternative theory of the obstruction of receipt of sand. Since the two offenses involved different factual elements, the conviction of one offense would not bar trial for the other offense. The cases so holding are legion.

victed of obstructing the shipment of steel products in interstate commerce. This was not a case where the obstruction was proved to have been done in a different way from that charged. Here an altogether different obstruction was shown.

The Opinion of the Court of Appeals says (Appendix A, *infra*, p. 18) that the record discloses that counsel was prepared for the introduction of the testimony that the shipment of steel had been obstructed, rather than surprised by it. We know of no portion of the record disclosing any such thing and we note that no defense was made to the charge that the flow of steel products into interstate commerce had been dammed up.

Accordingly, we think both tests laid down in the *Berger* case must be resolved in petitioner's favor. The conviction should not be permitted to stand if we are correct about either test.

By affirming the conviction in the present case, the majority of the court below simply have set aside the rule that there can not be a conviction upon a charge not made. Petitioner submits that intervention by this Court is required in order that there be reinstated the right of Americans to be tried only after notice of the charges against them.

4. There Is a Conflict of Decision Among the Various Courts of Appeal as to Whether or Not Congress Has Power to Control Local Activities Only Indirectly Affecting Interstate Commerce.

Rider purchased, used and disposed of the sand exclusively intrastate. The decision of the Third Circuit in this case is therefore in conflict with the decision of the Court of Appeals for the Ninth Circuit where that Court in the case of *Fairway Foods, Inc. v. Fairway Markets, Inc., et al.* 227 F. 2d 193, determined that the activities of retail grocers purchasing and selling their wares exclusively intrastate are not a permissible field for congressional regulation under the Commerce power.

The decision of the Third Circuit is also in conflict with decisional dicta of the Second Circuit in the case of *Consolidated Edison Co. v. N. L. R. B.*, 95 F. 2d 390 (modified on other grounds, 305 U. S. 197, 59 S. Ct. 206):

> "Consistently with these principles it can scarcely be doubted that the labor disputes of a local merchant will not normally fall within the Board's jurisdiction, even though some part of his stock in trade originates outside the state or some of his local customers are engaged in interstate commerce. In such a case the closing of the merchant's store by a strike of his employees would undoubtedly affect interstate commerce, but the effects would be too remote and indirect to bring his activities within the range of federal regulation."

See also *Application of Bookbinder's Restaurant*, 240 F. 2d 365 with which the decision in the present case conflicts.

CONCLUSION.

For the reasons set forth herein, we respectfully submit that this petition for a writ of certiorari should be granted.

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Certificate of Service.

I certify that I have served by mail upon Solicitor General of the United States, Department of Justice, Washington 25, D. C., five copies of the foregoing Petition for a Writ of Certiorari and that I have served five copies thereof by mail upon United States Attorney, Federal Building, Pittsburgh, Pa.

Vincent M. Casey
VINCENT M. CASEY,
Attorney for Petitioner.

APPENDIX A.

Opinion of the Court Below.

(Filed December 9, 1958)

Before Goodrich, Staley and Hastie, *Circuit Judges*.

By Goodrich, *Circuit Judge*.

This is an appeal from a judgment of conviction rendered in the Western District of Pennsylvania in a prosecution under the Hobbs Act, 18 U. S. C. (1951. That statute penalizes anyone who "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion . . . ."[1] Extortion is defined as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear . . . ."[2]

The verdict of the jury came following a long, hard fought trial. Defendant, in this appeal, raises many questions which he claims were incorrectly decided by the district court whose careful and thorough opinion may be found in — F. Supp. — (W. D. Pa. 1957).

Defendant, a labor union official, was alleged to have extorted money from a man named William G. Rider who was in the business of supplying ready-mixed concrete. The Government's version of the facts, accepted by the jury, was that the defendant had come to Rider, following Rider's entering into a profitable contract to supply mixed concrete for the construction of a steel mill in Allenport, Pennsylvania, and that he had threatened Rider with the

1. 18 U. S. C. § 1951(a) (1951).
2. 18 U. S. C. § 1951(b)(2) (1951).

loss of that contract if he did not give the defendant fifty cents a cubic yard for all concrete furnished for this job. The sufficiency of this recital to justify conviction under the statute will be considered later. Defendant's first contention is that interstate commerce was in no way affected by his actions.

I. Interstate Commerce.

The interstate commerce question is simpler than the defendant's argument would have it appear. In making this ready-mixed concrete Rider bought sand which was pumped out of the Ohio River in Ohio, West Virginia or both. The Duquesne Sand Company, which pumped the sand from the river, sold it to Duquesne Slag Products Company. It was on Slag Products Company's land that Rider's operations for the contract mentioned were being carried on. It is sufficient to point out, to settle this part of the case, that some of the barges of sand were brought into Pennsylvania, consigned to Rider and unloaded by him at the place where his work was being carried on. This sand came from outside Pennsylvania. Whether it was consigned directly to Rider or was consigned to Duquesne Slag but delivered to Rider does not matter. There was interstate commerce in the progress.

It is not necessary that this should have been the progress of all sand; it is enough that there was evidence that a considerable quantity was sent to Rider in this way. We do not need to worry ourselves with the problem of material having come to rest from an interstate commerce journey and then having something else done to it after it has reached its destination. The facts, as to some of this sand at any rate, are as clear as if a Philadelphia baking concern, through a broker, ordered flour to be shipped from Minneapolis to him at Philadelphia. *Halahan v. United States*, 214 F. 2d 441 (8th Cir. 1954), is in point here; likewise its predecessor, *Nick v. United States*, 122 F. 2d 660 (8th Cir. 1941). See *NLRB v. International Rice Milling Co., Inc.*, 341 U. S. 665 (1951).

So far, so good; interstate commerce was involved in the delivery of this sand to Rider and if such commerce was affected by extortion on the part of the defendant there is an offense committed under the Hobbs Act.

There is another phase of the interstate commerce point, however, which presents more difficulty. The second paragraph of the indictment charged that Rider was a party to a contract "for the erection of a steel processing plant at Allenport, Pennsylvania, and, for the purpose of performing said contract, caused supplies and materials to move in interstate commerce between various points in the United States and the site of his plant for the manufacture of the mixing of ready mixed concrete. . . ." The connection of this charge with the facts shown about the shipment of the sand has already been discussed.

During the course of the trial a witness from the steel company whose plant was being built at Allenport gave evidence that when the steel mill was completed it would ship much of its product out of the state of Pennsylvania, notably to Michigan and Kentucky. The court, in its charge, told the jury that if it was satisfied "that Mr. Rider's concrete was used for constructing a mill which would manufacture articles of steel to be shipped in interstate commerce" and if they believed the defendant extorted money from Mr. Rider they were instructed "as a matter of law that there has been a substantial effect on interstate commerce shown by the United States."

There are two questions raised by this. The first has to do with whether the indictment covers this phase of the alleged crime and whether, if not, there is a fatal variance between indictment and proof. As said above, the indictment charged interference with interstate commerce on the receiving, not the sending end, except by stating that the sand was for a steel mill.

If there was a variance, no harm was done by it and it is not a source of reversible error. The defendant was not surprised; the testimony about the destination of the prod-

uct of the mill was objected to, but counsel's argument against it was directed to the substantive law concerning the scope of interstate commerce. The record discloses that counsel was prepared for the introduction of the testimony rather than surprised by it. It is now too late to raise the point. See the discussion in *Berger v. United States*, 295 U. S. 78 (1935).

The second question under this head is the correctness of the charge as a matter of substantive law. Is an interference with a man who is furnishing material for a mill which, when completed, will manufacture products which, if successfully marketed, will be shipped out of the state close enough to interstate commerce to be made a federal offense? It is to be noted that the language used in the statute is very broad, seemingly intended to cover all that federal legislation can cover in this regard.[3]

We find a helpful authority in *Mitchell v. Vollmer & Co., Inc.*, 349 U. S. 427 (1955). There employees engaged in construction of a lock which, when completed, was to be part of the Gulf Intercoastal Waterway, were held to be engaged in commerce within the meaning of the Fair Labor Standards Act. While the lock, when done, was to become an instrumentality of commerce, while it was in the process of construction it was as much in the preparatory stage as the steel mill here. And in *Reed v. Pennsylvania Railroad Co.*, 351 U. S. 502 (1956), the Supreme Court, reversing our decision in 227 F. 2d 810, held that the Federal Employers' Liability Act applied to an office worker whose duties were to file tracings of the company's rolling stock, equipment and structures. The *Vollmer* decision was held by the Fifth Circuit last year to include within "interstate commerce" the building of a causeway over which interstate traffic would flow when it was completed. *Archer v. Brown & Root, Inc.*, 241 F. 2d 663 (1957). The decision also brought within "interstate commerce" the production of material

3. See 18 U. S. C. § 1951(b)(3) (1951). "The term 'commerce' means . . . and all other commerce over which the United States has jurisdiction."

for the causeway construction and the construction of a plant which when completed would produce materials to be used in the causeway construction. The only difference between this last aspect of the *Archer* case, supra, and the case at bar is that in the case at bar the plant, when completed, will produce materials which themselves will move in interstate commerce, whereas the material to be produced by the plant in *Archer* would be used for further construction. On principle the cases are indistinguishable.

The court in *Archer* declined to state whether it thought that *Vollmer* had swept away all the prior learning on the question of what touched or concerned interstate commerce sufficiently to be made the subject of federal regulation. See also *Mitchell v. Hodges Contracting Co.*, 238 F. 2d 380 (5th Cir. 1956). Nor do we here. It is sufficient that we think to apply the federal regulation to the case in hand is within current authorities.[4]

II. Sufficiency of the Evidence.

We now turn to the defendant's contention that the evidence was insufficient to sustain a conviction. This point we can dispose of very quickly. The testimony of Rider and Mrs. Rider, if believed, is sufficient to support a finding that Rider was forced to pay this money to Stirone through fear of economic loss to his profitable business with the company

4. In Mitchell v. Hodges Contracting Co., 238 F. 2d 380 (1956), the Fifth Circuit brought within the ambit of the Fair Labor Standards Act employees engaged in the construction of a new radio-television building for a local newspaper. Although television was a new enterprise for the newspaper, it previously had operated a radio station. The court, in applying the Fair Labor Standards Act to the construction, stated that the prior existence of the radio station removed it from "any status or naked 'new' construction for an activity not yet in being." 238 F. 2d at 384. See also United States v. Newjer Contracting Co., 161 F. Supp. 867 (D. N. J. 1958), in which the court held that employees of a construction company engaged in construction work on a super highway which when completed would facilitate the flow of traffic to other states were within the Fair Labor Standards Act.

constructing the steel mill. It is true that argument could be made to the contrary. But the argument to the contrary was made to the jury. Indeed, defendant denied that he was at the place where Rider said he was on the day of the alleged conversation and denied that the conversation ever took place. All this, however, is settled by the finding of the jury and that finding is amply supported in the testimony. Reasonable fear of economic loss is enough to come within the statute. *Bianchi v. United States*, 219 F. 2d 182, 194 (8th Cir. 1955).

III. Evidence of Similar Offenses.

The prosecution, over objection, was permitted in rebuttal to introduce testimony of similar offenses by the defendant. These extortions, or coerced payments of money, if they took place, occurred following the incident of which Rider complains. This testimony had been offered in the Government's case in chief but the trial judge refused it. Later it was received as showing intent, scheme, plan or design.

The question of the admissibility of evidence of offenses other than the one for which the defendant is on trial is a very difficult one. Contradictory statements abound in the decisions and the judicial crop has been subjected to severe criticism by writers of law review articles.[5] The difficulty is one which is inherent in the nature of the problem.[6] Anyone obligated to determine the guilt or innocence of a defendant charged with a particular crime invariably would be influenced by a showing that the defendant commits

5. The following articles contain a careful consideration of the problems in this area. Stone, *The Rule of Exclusion of Similar Fact Evidence: England*, 46 Harv. L. Rev. 954 (1933); Stone, *The Rule of Exclusion of Similar Fact Evidence: America*, 51 Harv. L. Rev. 988 (1938).

6. "It is hopeless to attempt to reconcile the precedents under the various heads; for too much depends on the tendency of the Court in dealing with a flexible principle." 2 Wigmore Evidence § 302 at 201 (3d ed. 1940).

crimes in general. Certainly it is probative to prove that a defendant in a criminal case is a man who commits crimes. This showing is strengthened by evidence that he has committed other crimes similar to the one with which he is now charged. The trouble is that while such evidence is probative it is highly prejudicial and a court or jury may find itself determining in general whether the defendant is a bad man rather than whether he committed a particular crime.

So, the general rule, as stated by most courts, is that evidence of other offenses is inadmissible in a criminal prosecution for a particular crime. This rule is qualified by a number of exceptions[7] stated in terms of the capacity of the evidence to prove some specific fact or issue such as intent, plan, scheme or design. *E.g., United States v. Klass*, 166 F. 2d 373, 377 (3d Cir. 1948); *United States v. Bradley*, 152 F. 2d 425 (3d Cir. 1945). But since the range of relevancy, other than for the purpose of showing criminal propensity, is almost infinite,[8] we think the rule may be phrased a little less mechanically. Evidence of other offenses may be received if relevant for any purpose other than to show a mere propensity or disposition on the part of the defendant to commit the crime.[9]

Of course the trial judge may, in the exercise of his sound discretion, exclude evidence which is logically relevant to an issue other than propensity, if he finds that

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7. McCormick, Evidence § 127 at 328-31 (1954). See Note, 29 Mich. L. Rev. 473 (1931).

8. *Id.* at 327.

9. Even this general statement must be qualified in prosecutions for sex offenses. A number of jurisdictions admit evidence of other similar offenses where offered to prove propensity for illicit sexual relations with a particular person. *E.g.*, Hodge v. United States, 126 F. 2d 849 (D. C. Cir. 1942) (incest); State v. Terry, 199 Iowa 1221, 203 N. W. 232 (1925) (incest); Sykes v. State, 112 Tenn. 572, 82 S. W. 185 (1904) (statutory rape). An extensive annotation on the subject is contained in 167 A. L. R. 565. A few decisions have admitted evidence of sex crimes with persons other than the particular person involved in the crime on trial. Compare Fairbanks v. United States, 226 F. 2d 251 (D. C. Cir. 1955), with Commonwealth v. Kline, 361 Pa. 434, 65 A. 2d 348 (1949).

the probative value of such evidence is substantially outweighed by the risk that its admission will create a substantial danger of undue prejudice. *United States v. Feldman*, 136 F. 2d 394, 399 (2d Cir. 1943); *United States v. Shurtleff*, 43 F. 2d 944, 947-48 (2d Cir. 1930). See UNIFORM RULES OF EVIDENCE 55, 45; MODEL CODE OF EVIDENCE Rule 303 (1942). But it must be borne in mind that the greater the probative force of the evidence, the more likely it is to be prejudicial to the party against whom it is offered.

In this case we think that there was no abuse of discretion in receiving the testimony. Rider testified that the defendant had interviewed him at his place of business on a certain date and that the defendant had threatened him with labor trouble if he did not make payments to the defendant. Stirone denied this meeting at the time and place specified but he admitted having collected money from Rider which he said was a fair and legitimate commission for services rendered in securing for Rider a profitable contract. The defendant argues that if Rider's testimony is believed the nature of the relationship between the defendant and Rider was proved and this other evidence was unnecessary. But the question before the jury was whether Rider's story was to be believed or not, the defendant having vehemently denied it. The evidence in question was, therefore, relevant to explain Stirone's purpose or intent in soliciting money from Rider. See *United States v. Blount*, 229 F. 2d 669, 671-72 (2d Cir. 1956); *United States v. Wall*, 225 F. 2d 905 (7th Cir. 1955).

The trial judge limited this evidence very strictly. He cautioned the jury "that the fact that the defendant may have committed another similar act is not of itself any evidence that he is guilty of the offense charged in the indictment." He told the jurors that before they could consider this testimony they must first find "that the other evidence in the case, standing alone, establishes beyond a reasonable doubt the accused did the particular acts charged in the indictment." Then he limited consideration of the testimony to showing intent, plan or scheme.

If the limitations given to the jury by the trial judge were more strict than he was required by law to make, that is, clearly, not a matter of which the defendant can complain.

IV. Prejudicial Misconduct at the Trial.

The defendant complains of prejudice engendered at the trial by the prosecuting attorney. We do not find such prejudice. It was a very vigorously contested case. Lawyers for both sides "clash'd on their sounding shields the din of war."[10] Each side made charges against the witnesses for the other side. There was a suggestion that the prosecuting attorney injected his personal belief of the defendant's guilt into his argument. There is some talk which would perhaps support this contention. If there is any point to this, it was not timely made and so it does not need to be considered. We, of course, agree that the lawyer's own view as to the probity of witnesses or the soundness of a case is not something to be argued to the trier of the fact. We doubt, too, whether invectives thrown at witnesses for an opponent or at the lawyer for an opponent assist a jury to decide a case. But as we read through the record here we do not think that prejudicial error was committed although each counsel no doubt exasperated the other very much. The trial judge held the contestants in check calmly and his charge was a model of fairness. We think there is nothing to complain of in this department. As Judge Hand pointed out a number of years ago, *DiCarlo v. United States*, 6 F. 2d 364, 368 (2d Cir. 1925), the prosecuting attorney may not be shorn "of all oratorical emphasis."

There is mention in the brief, though not an oral argument, of a complaint based on the circulation of a pamphlet for jurors. As pointed out by the trial judge, this objection was not timely made and need not be considered. There is, likewise, a complaint about the use of subpoenas by the Government. We find this trivial.

The judgment of the district court will be affirmed.

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10. Milton, Paradise Lost, Bk. I, l. 668.

APPENDIX B.

Dissenting Opinion of the Court Below.

HASTIE, *Circuit Judge, dissenting.*

One of the principal questions in this case is whether the court below erred in charging the jury as follows:

> "Or if you are satisfied beyond a reasonable doubt that Mr. Rider's concrete was used for constructing a mill which would manufacture articles of steel to be shipped in interstate commerce and if you also believe that the defendant extorted money from Mr. Rider, you are instructed as a matter of law that there has been a substantial effect on interest commerce shown by the United States. In other words, if you find the facts to be as the Government contends, interstate commerce has been affected, obstructed and delayed."

Stating the issue thus raised this court asks:

> "Is an interference with a man who is furnishing material for a mill which, when completed, will manufacture products which, if successfully marketed, will be shipped out of the state close enough to interstate commerce to be made a federal offense?"

To this question the majority give an affirmative answer. I regret that I am unable to concur.

It is recognized and agreed that the Hobbs Act, 18 U. S. C. § 1951, and the present indictment founded on that statute do not purport to make an extortionate demand upon a business proprietor a federal crime except upon a clear showing that such interference with the business in question actually "obstructs, delays or affects" interstate commerce or the movement of some article in such commerce.

Cf. United States v. Employing Plasterers' Assn., 1954, 347 U. S. 186.

In some situations the business against which an extortionate demand has been made can be shown to be a part of or intimately related to interstate commerce so that any disruption of that business necessarily has significant effect upon commerce. Thus, and most obviously, if the business directly affected by an extortionate demand is interstate transportation the wrong is within the Act. *E.g. United States v. Kemble*, 3d Cir., 1952, 198 F. 2d 889. Again, if extortion is directed against a proprietor engaged in providing, operating or otherwise working upon something so closely related to functioning interstate commerce as to merit characterization as a facility or instrumentality of such commerce, this in itself may be enough to bring extortion hampering that enterprise within the statute. *Cf. Mitchell v. Vollmer & Co.*, 1955, 349 U. S. 427; *Overstreet v. North Shore Corp.*, 1943, 318 U. S. 125; *Archer v. Brown & Root Inc.*, 5th Cir., 241 F. 2d 663.

But here the only commerce said to be affected is the prospective distribution of goods to be produced by a factory about to be constructed. I think it would be an unwarranted extension of the concept of wrongful conduct affecting interstate commerce to embrace this interference with the supplying of building material for a structure which will house an activity which will eventually create some new commerce. In other circumstances it has been thought essential to federal jurisdiction under the commerce clause that the regulated conduct be related to some existing commerce, and not solely to commerce contemplated or planned to have its beginning in the future. This view is exemplified and strongly supported by the cases, of which our own decision in *Kelly v. Ford, Bacon & Davis, Inc.*, 1947, 162 F. 2d 555, is an often cited leader, refusing to extend the Fair Labor Standards Act conception of activity affecting the production of goods for commerce to the construction of new plants intended solely for the future

production of goods for interstate distribution. The vitality of this concept is attested by *Murphy v. Reed*, 1948, 335 U. S. 865, and a comment on that decision in *Mitchell v. Vollmer & Co. supra*, at 430 n. 2. It seems to me that the special aversion of the criminal law for speculative conclusions in the chain of proof of guilt makes this limitation even more appropriate, indeed essential, in applying the Hobbs Act.

In addition to this difficulty of affecting commerce not yet begun, the present case presents a second speculative factor. The extortionate threat was made against a local supplier of mixed concrete. It is entirely speculative whether or not preventing this single materialman from furnishing mixed concrete on the construction job he was serving would have affected even future interstate commerce. Was concrete in abundant or short supply? Were there other materialmen ready and anxious to supply without delay the concrete needed for the job? The record tells us nothing. But without some proof that the loss of this supplier would in fact have some delaying effect on the eventual productivity of the mill, any suggested ultimate effect even on interstate commerce several steps removed is speculative to an extreme degree. *Cf. United States v. Starlite Drive-In, Inc.*, 7th Cir. 1953, 204 F. 2d 419. Indeed, I understand the authoritative rule to be that where the conduct in question is an interference with a distinct solely local business, there must be a substantial resultant demonstrable effect, the very antithesis of a speculative effect, upon interstate commerce to justify federal intervention under the commerce power. *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.*, 1948, 334 U. S. 219; *Wickard v. Filburn*, 1942, 317 U. S. 111; *United States v. Wrightwood Dairy Co.*, 1942, 315 U. S. 110. It is true that "[i]f it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze." See *United States v. Women's Sportswear Mfgrs. Assn.*, 1949, 336 U. S. 460, 464. But this figure of speech carries with it

the idea that the "squeeze" must be real and the "pinch" uncomfortably perceptible.

On the present record no more can be said than that what was done to an entirely local business might conceivably have future impact on commerce. Most certainly not even a likelihood of actual impact upon interstate commerce can properly be said to have been proved beyond reasonable doubt. Yet that at least was the burden the government undertook to bear in this criminal case.

Finally, it should be considered and kept in mind that the control and punishment of local extortion is primarily the business of local or state government. The Hobbs Act is an auxiliary and partially duplicating federal superimposition on state law enforcement. In the view of Congress this is a desirable measure of federal assistance to the states in the exercise of their police power. But where state power and responsibility are thus primary and the national government is merely performing an auxiliary function, we should not be eager to stretch federal jurisdiction to cover doubtful cases offering only a tenuous or speculative theory of federal jurisdiction. See *Schwartz, Federal Criminal Jurisdiction and Prosecutors' Discretion*, 1948, 13 LAW AND CONTEMPORARY PROBLEMS, 64, 70. We should insist that federal jurisdiction be clear before imposing federal sanctions in an area of primarily local concern. Federal jurisdiction is certainly far from clear in the circumstances we are now considering.

What has been said in this dissenting opinion concerns only one of the two bases upon which the jury could have found the essential effect upon interstate commerce under the court's charge. We cannot know upon which theory the jury proceeded in finding the accused guilty. Therefore, I would send this case back to the district court for a new trial at which the erroneous theory of involvement of interstate commerce would be eliminated.

APPENDIX C.

Judgment of the Court Below.

Present: GOODRICH, STALEY and HASTIE, *Circuit Judges.*

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed.

Attest:

IDA O. CRESKOFF
Clerk

December 9, 1958

APPENDIX D.

Opinion of the Court Below on Petition for Rehearing.

(Filed January 27, 1959)

Before: BIGGS, *Chief Judge*, and GOODRICH, MCLAUGHLIN, STALEY and HASTIE, *Circuit Judges*.

PER CURIAM.

A petition for rehearing is presented for our consideration. The grounds urged therein have been fully argued to this court. We find no merit therein that would warrant a rehearing. Accordingly it will be denied.

APPENDIX E.

Dissenting Opinion of the Court Below on Petition for Rehearing.

BIGGS, *Chief Judge*, dissenting.

A fatal variance appears between the charge of the indictment and the proof. This court held correctly that the indictment charged Stirone with obstructing the receipt of sand at Rider's plant but concluded that it was not error for the trial court to have charged that the interference with interstate commerce prohibited by the Hobbs Act, 18 U. S. C., Section 1951, could be found either on the basis of interference with the receipt of the sand or on the ground of obstruction with the shipping of steel from the Allenport plant of the Pittsburgh Steel Company which was in course of construction. Stirone was therefore tried on two charges. One, obstruction of the receipt of sand, and two, interference with delivery of steel from a plant not yet built. The first charge was laid in the indictment. The second was not. The doctrine of Berger v. United States, 295 U. S. 78, 81 (1935) cannot cure the error. It is clear in Berger that the crime for which Berger was convicted was within the words of the indictment, see 295 U. S. at pp. 81-83; the objection here is that the allegations of the indictment do not charge the crime for which Stirone was convicted.

I am also in accord with the views expressed in Judge Hastie's dissenting opinion. The statute is extended unreasonably to embrace interference with prospective distribution of steel from a factory in course of construction. The Allenport plant of the Pittsburgh Steel Company is not and was not a facility in interstate commerce. Cf. Mitchell v. Vollmer & Co., 349 U. S. 427 (1955); Archer v. Brown & Root, Inc., 241 F. 2d 663, 669 (5 Cir. 1957).

Stirone preserved his rights by appropriate objections.

I therefore must respectfully dissent from the order of this court denying rehearing.

Judge Hastie shares these views and joins in this dissent.

APPENDIX F.

Order of the Court Below Sur Petition for Rehearing.

Present: BIGGS, *Chief Judge*, and GOODRICH, MCLAUGHLIN, STALEY, and HASTIE, *Circuit Judges*.

After due consideration the petition for rehearing in the above-entitled case is hereby denied.

By THE COURT

GOODRICH,
Circuit Judge.

Dated: January 27, 1959.

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Office-Supreme Court, U.S.
FILED
MAR 26 1959
JAMES R. BROWNING, Clerk

No. [redacted] 35

In the Supreme Court of the United States

OCTOBER TERM, 1958

NICHOLAS A. STIRONE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
MALCOLM ANDERSON,
Assistant Attorney General,
BEATRICE ROSENBERG,
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500573—59

In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 722

NICHOLAS A. STIRONE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinions in the Court of Appeals (Pet. App. A, B, D and E) are unreported. The opinion of the district court (R. 304a–319a) is reported at 168 F. Supp. 490.

JURISDICTION

The judgment of the Court of Appeals was entered on December 9, 1958. A petition for rehearing was denied on January 27, 1959. The petition for a writ of certiorari was filed on February 24, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, as a matter of law, there was sufficient evidence of effect upon interstate commerce to support application of the Hobbs Act and whether that question was for the court or the jury.

2. Whether there was a prejudicial variance between the indictment and the issues submitted to the jury.

STATUTE INVOLVED

18 U.S.C. 1951 provides:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.
>
> (b) As used in this section—
>
> * * * * *
>
> (3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

STATEMENT

A. *The Extortion.* The petitioner, Nicholas A. Stirone, was convicted at a jury trial of extorting money from William A. Rider, in violation of 18

U.S.C. 1951, sometimes called the Hobbs Act (R. 302a). The petitioner was the president of Local 1058, affiliated with the Hod Carriers Union, and also president, since 1947, of the Laborers District Council of Western Pennsylvania with territorial jurisdiction over 33 counties of Pennsylvania (R. 41b–42b). Rider had a contract to supply Ragnar Benson Company with all ready-mixed concrete needed for the construction of a steel mill which Ragnar Benson was erecting for the Pittsburgh Steel Company (R. 45a). The evidence duced at the trial indicated that petitioner had extorted 50 cents a cubic yard for concrete which was supplied by William G. Rider under the contract to keep Rider "out of labor trouble" and "to hold on to the contract" (R. 105a, 137a). This amounted to $31,274.13 (R. 175a).

Petitioner claimed the money was a commission paid for aiding Rider in obtaining the contract (R. 184a-185a). He said the arrangement resulted from a conversation with Mr. Dierker (Rider's lessor and supplier) held August 27, 1951 at the Carlton House (R. 440a). Both petitioner and Mr. Dierker set the time and place as the Carlton House on August 27, 1951 (R. 45b, 47b, 54–55b). The government showed that the Carlton House did not open for business until the following year and that the Carlton House restaurant, where the conversation allegedly took place, was not opened until April 23, 1952 (R. 86b). The jury brought in a verdict of guilty (R. 302a) and petitioner was sentenced to three years imprisonment and fined $5,000 (R. 337a).

B. *Interstate Commerce.*

1. The indictment charged in part as follows (R. 6a):

> 1. That at all times hereinafter mentioned a part of the interstate commerce of the United States has consisted of the transportation between the several states of materials and supplies for use in the making of ready mixed concrete used in the construction and erection of a factory or plant for processing of steel.
>
> 2. That at all times hereinafter mentioned, William G. Rider was a party to a contract to supply ready mixed concrete for the erection of a steel processing plant at Allenport, Pennsylvania, and, for the purpose of performing said contract, caused supplies and materials to move in interstate commerce between various points in the United States and the site of his plant for the manufacture or mixing of ready mixed concrete, and more particularly, from the outside of the State of Pennsylvania into the State of Pennsylvania.

The evidence showed that the Rider Supply Company (which paid the extortion money) obtained all the sand used to make the ready mix concrete from the Duquesne Slag Company of Pennsylvania (R. 76a, 93a). The Slag Company in turn obtained more than 90% of its sand from the Duquesne Sand Company, which obtained the bulk of it from Ohio and West Virginia (R. 71a, 65a, 48a, 49a). During the period in question some barges of sand were consigned directly from the sand company to Rider (R. 79a–80a). In all, 32,764.13 yards of concrete were delivered in construction of the steel mill (R. 172a), from September 13, 1951 (R. 169a) to March 1954 (R. 172a).

2. In addition, George Herbert Keisling, the Assistant Controller of the Pittsburgh Steel Company, (R. 43a), testified that the major products from this particular hot strip mill were used in the automotive and appliance industry (R. 50a) and were shipped to Michigan and Kentucky (R. 53a). About 80% of the product of this hot strip mill were shipped interstate (R. 55a). The basic materials for the mill came from Minnesota and a small portion from South America (R. 53a).

3. During the course of the charge to the jury in regard to interstate commerce, the judge stated (R. 286a–288a):

> Since it is your exclusive function to decide what the facts are, it will be for you to determine the facts relating to the interstate commerce aspect of this case. It is only if there has been one of these effects on interstate commerce that an offense against the laws of the United States has been committed, because interstate commerce is the basis of the federal jurisdiction in this case.
>
> At the opening of the case, the Government introduced evidence relating to the dredging and shipment of sand which it contends was used in the manufacture of the cement which Mr. Rider used in performing the Ragnar-Benson contract which has been the subject of much testimony in this case.
>
> It is the Government's contention that all or substantially all of the sand so used has been shipped in interstate commerce. It is also the position of the Government that concrete supplied by Mr. Rider containing the sand shipped

in interstate commerce was being used in the construction of a plant which, when in operation, would produce articles of steel to be shipped in interstate commerce.

Consider the evidence of the Government on this question in the light of any other circumstances or other evidence bearing on the interstate nature of the shipment of sand or the sand used in making concrete supplied by Mr. Rider and on the use to which the mill under construction would be and was put. Then if you are satisfied beyond a reasonable doubt that the sand had been shipped from another state into Pennsylvania by any means of transportation and was used in making concrete supplied by Mr. Rider and that Mr. Stirone extorted money from Mr. Rider, the alleged extortion would be an act which obstructed, delayed or affected interstate commerce, and the movement of commodities in interstate commerce.

Or if you are satisfied beyond a reasonable doubt that Mr. Rider's concrete was used for constructing a mill which would manufacture articles of steel to be shipped in interstate commerce and if you also believe that the defendant extorted money from Mr. Rider, you are instructed as a matter of law that there has been a substantial effect on interstate commerce shown by the United States. In other words, if you find the facts to be as the Government contends, interstate commerce has been affected, obstructed and delayed.

Subsequent to the verdict, the district judge, in ruling on post trial motions, stated (R. 305a–307a):

> * * * It was then proved at the trial that sand used by Rider in manufacturing ready-

> mixed concrete and purchased from Duquesne Slag Products Company had without question been transported in interstate commerce, and secondly, that steel articles produced at the plant after construction had been transported in commerce to the centers of the appliance and automotive industries outside the State of Pennsylvania. * * *
>
> * * * The court correctly told the jury that if the government's facts were believed, interstate commerce had been affected by the conduct of the defendant * * *. That statement was based upon a premise that a deliberate act which tends to prevent articles from being used once they have reached their destination after being shipped in interstate commerce dams up the stream of commerce and delays, obstructs and affects interstate commerce as surely as though the same act had cut off the supply at its source.

4. On appeal, the conviction was affirmed, one judge dissenting. The majority found that the effect of the extortion on the movement of sand from outside Pennsylvania would be a sufficient involvement of interstate commerce. The dissenting judge did not disagree with that conclusion. The disagreement in the court below was only as to the problem created by the fact that the judge also submitted to the jury the issue of a possible effect on interstate commerce, not only from the sand purchases, but from the fact that Rider's concrete was used for constructing a mill which would manufacture articles of steel which would be shipped in interstate commerce. The dissenting judge was of the view that this was not an

adequate basis on which to find an effect on interstate commerce from the extortion and that, since it could not be determined whether the jury's verdict rested on the proper or improper basis, the conviction would have to be reversed (Pet. App. B). The majority opinion took the view that the alternative basis of interstate commerce jurisdiction was a proper one, and that the submission of this alternate basis to the jury did not constitute a prejudicial variance from the indictment (Pet. App. A).[1]

ARGUMENT

1. (a) As appears from the Statement, the trial judge found and submitted to the jury two possible bases on which the jury could have found interstate commerce: (1) the interstate commerce involved in bringing into Pennsylvania from Ohio and West Virginia the sand which went into Rider's ready mix concrete—an aspect of the case which may conveniently be designated as "sand commerce"; and (2) the interstate commerce resulting from the fact that the concrete was to be used in construction of a building for the manufacture of steel products which would be shipped in interstate commerce—an aspect of the case which we designate as "building commerce". None of the judges in the Court of Appeals expressed disagreement with the holding of the majority that the "sand commerce" was itself clearly sufficient to show that the extortion proved was a violation of the Hobbs Act. There is no warrant in the opinions for the

[1] On petition for rehearing *en banc*, Judge Biggs, agreeing with Judge Hastie in dissent, expressed the view that the variance was prejudicial (Pet. App. E).

petitioner's attempt to couple the ruling on this aspect of the case with the views expressed by the dissent as to "building commerce" so as to suggest that no federal offense was proved.[2] Clearly, the "sand commerce" was interstate commerce. *N.L.R.B.* v. *International Rice Milling Co., Inc.*, 341 U.S. 665; *Hulahan* v. *United States*, 214 F. 2d 441 (C.A. 8), certiorari denied, 348 U.S. 856. And equally clearly, the extortion proved did affect that "sand commerce" since, if Rider had not been able to keep his contract, the particular movements represented by bringing the sand from Ohio and West Virginia (whether directly to Rider, or to Rider via the Slag Company) would have been obstructed.

For this reason, we think that the issues raised by the dissenting opinions below, and argued by petitioner here, are not really presented in this case. The finding as to whether the relationship of these facts to interstate commerce was sufficient to support federal power was for the judge to make, and not the jury. The Hobbs Act punishes any person who "in any way" affects commerce by extortion. The question of whether there was extortion in relation to

---

[2] The incomplete quotation from Judge Hastie's dissent relied on by the petitioners (Pet. 8) when read in context (Pet. App. B, p. 26) is clearly a reference to "building commerce" only. The sentence immediately following the petitioners' quotation reads: "But without some proof that the loss of this supplier would in fact have some delaying effect on the eventual productivity of the mill, any suggested ultimate effect even on interstate commerce several steps removed is speculative to an extreme degree." And later in his opinion (Pet. App. B, p. 27) he added "What has been said in this dissenting opinion concerns only one of the two bases upon which the jury could have found the essential effect upon interstate commerce under the court's charge."

Rider's contract was, of course, for the jury. But the issue of whether the impact on Rider's contract affected interstate commerce was a question of law for the court, and not an issue of fact to be submitted to the jury. There were no disputed issues of fact as to Rider's contract, the nature of the building, or the source of his supply. The only issue was the legal effect of such facts. That had to be determined by the judge. Early, under the Anti-Racketeering Act of 1934 (the predecessor of the Hobbs Act) Judge Learned Hand, in *United States* v. *Campagna*, 146 F. 2d 524 (C.A. 2), certiorari denied, 324 U.S. 867, stated at p. 527:

> * * * If these were the facts, the business was interstate as [a] matter of law, and the question should not have been submitted to the jury; and since nobody contested the facts, but only their legal effect, it was unnecessary for the judge to say anything on the issue. * * *

See also to the same effect under the later Act, *Hulahan* v. *United States*, 214 F. 2d 441, 446 (C.A. 8), certiorari denied, 348 U.S. 856, which has been consistently approved. *United States* v. *Green*, 246 F. 2d 155 (C.A. 7), certiorari denied, 355 U.S. 871; *United States* v. *Lowe*, 234 F. 2d 919 (C.A. 3), certiorari denied, 352 U.S. 838; *United States* v. *Varlack*, 225 F. 2d 665 (C.A. 2).

If the decision was for the judge, any adequate interstate relationship is enough to support his conclusion, regardless of whether another basis is or is not correct. The "sand-commerce" alone supports the verdict. There is, as to the judge's ruling, no such

issue as that posed in Judge Hastie's dissent arising from the difficulty of trying to determine the basis of the verdict. We know that the judge found both aspects to involve interstate commerce. And since the "sand commerce" alone is sufficient, the "building commerce" question need not be reached.

(b) If the Court should feel that the "building commerce" question is in the case, then we submit that the majority below was correct on that issue. Contrary to the implications in Judge Hastie's dissent that the commerce aspect of the Hobbs Act should be construed restrictively, the statute shows on its face that it was the Congressional intent to cover the fullest reach of federal jurisdiction. The statute punishes anyone who "in any way or degree" obstructs or affects commerce, and defines "commerce", not only as movements between states, territories and possessions, but also as "all other commerce over which the United States has jurisdiction." In view of this sweeping language, extortion, which would affect construction of a steel mill which was obviously intended to engage in interstate commerce, is within the Act. See *Hulahan* v. *United States*, 214 F. 2d 441 (C.A. 8), certiorari denied, 348 U.S. 856, where one of the effects on interstate commerce was found to arise on the relation of the extortion there to the construction of a flour packaging and storage building. See also *Green* v. *United States*, 350 U.S. 415; and see, under the Fair Labor Standards Act, *Mitchell* v. *Vollmer & Co.*, 349 U.S. 427; *Archer* v. *Brown & Root, Inc.*, 241 F. 2d 663 (C.A. 5). The operation of the concrete mixing business in the context of the case at bar is not com-

parable to petitioner's examples of a local retail grocery in *Fairway Foods, Inc.* v. *Fairway Markets, Inc., et al.*, 227 F. 2d 193 (C.A. 9), nor a local catering restaurant service in *Application of Bookbinder's Restaurant*, 240 F. 2d 365 (C.A. 3). The claim of conflict on the basis of such decisions is therefore without merit.[3]

2. The fact that the "building commerce" was not in terms spelled out in the indictment does not, as the dissenting judges below thought, show a material variance. The two bases of interstate commerce do not make out two charges. The gist of the offense is extortion which has an effect on commerce. If that commerce is interstate commerce, a case within federal jurisdiction is made out; if the commerce is not interstate there is no federal offense. The petitioner

[3] If, as Judge Hastie believed, the trial judge was wrong in his ruling on the "building commerce" issue, and if that issue should (contrary to our view) properly have gone to the jury, then there would be presented the situation mentioned by Judge Hastie of trying to determine whether the jury's verdict rested on a proper or improper basis and whether, in the light of that fact, the judgment could be affirmed. We do not think that question need be reached since we think both that the issue was for the judge alone, and that, in any event, the judge's ruling on the "building commerce" was correct. But, if it became necessary to do so, we would argue that, even on the assumption that the ruling was incorrect on the "building commerce" issue, the judgment below could properly be affirmed on the basis of the "sand commerce" evidence. As noted, the facts as to each of the aspects of interstate commerce were not in dispute. There is thus no reason to believe that the verdict rested alone on the "building commerce" aspect interstate, and not also on the "sand commerce" aspect. And since the "sand commerce" is enough to make out the federal offense, there is no reason why the judgment should not be affirmed on such ground.

is incorrect in arguing (Pet. 12) that the variance in this case was such as to deprive him of his protection against another prosecution for the same offense. The petitioner states that he was not protected "against another prosecution for the offense of having obstructed the sending out of the steel products into interstate commerce." But the offense defined by the statute is obstruction of commerce by extortion, and not obstruction of "sand commerce" or steel "production commerce" or any other particular kind of commerce. Hence, had the case been tried only on the "sand commerce" theory, and had the petitioner been acquitted, he could not thereafter have been tried on the "building commerce" theory; he would have stood acquitted of the whole offense of obstructing any aspect of interstate commerce by the extortion charged.

The only question as to variance, then, is whether it was such as to take the petitioner by surprise and deprive him of the right to make an adequate defense. This question disappears from the case if, as we have developed above, the entire issue of interstate commerce was for the judge. On that view, the whole issue as to "building commerce" becomes immaterial since the judge's finding on "sand commerce" is enough. But even if the issue was properly left to the jury, there was no prejudice to the petitioner. The indictment charged that the sand was for a steel mill and hence proof with respect to the mill was within the charge. There was no dispute as to the facts. The petitioner had ample time to consider the legal implications of those facts with relation to commerce. The

trial lasted from June 4 to June 19 (R. 3a). The fact that the government claimed effect on interstate commerce by reason of the "products at the plant that was constructed going out" was developed early in the trial (R. 51a), and all sides then understood that this raised a question of law for the court (R. 52a). At the close of trial, the petitioner's counsel requested an adjournment to enable him to counteract testimony of Mr. Doherty, offered by the government in rebuttal on the extortion issue (R. 218a–241a, 266a–267a), but significantly there was no such request at any time with respect to the interstate commerce issue.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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IN THE

Supreme Court of the United States

October Term, 1958.

No. [redacted] 35

NICHOLAS A. STIRONE,
Petitioner,

v.

UNITED STATES OF AMERICA.

On Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR PETITIONER.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1958.

No. 722.

NICHOLAS A. STIRONE,

Petitioner,

v.

UNITED STATES OF AMERICA.

ON CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR PETITIONER.

OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Third Circuit is reported at 262 F. 2d 571 and is printed at R. 527 et seq. The dissenting opinion of Hastie, J. is reported at 262 F. 2d 578 and is printed at R. 535. The per curiam opinion denying rehearing appears at 262 F. 2d 580 and is printed at R. 553. The dissenting opinion of Chief Judge Biggs (in which Judge Hastie joined) on rehearing is reported at 262 F. 2d 580 and is printed at R. 554. The opinion of the District Court is reported at 168 F. Supp. 490 and is printed at R. 304a.

JURISDICTION.

The judgment of the Court of Appeals was entered on December 9, 1958. A petition for rehearing was denied on January 27, 1959. The petition for a writ of certiorari was filed on February 24, 1959 and was allowed on April 27, 1959. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

CONSTITUTIONAL, STATUTORY AND PROCEDURAL RULES PROVISIONS INVOLVED.

1. United States Constitution, Amendment V:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

2. United States Constitution, Article I, Section 8, Clause 3:

> "The Congress shall have power * * * To regulate Commerce with foreign Nations and among the several States, and with the Indian Tribes."

3. Hobbs Act, 18 U. S. C. § 1951(a)

> "Whoever in any way or degree obstructs, delays or affects commerce or the movement of any article

or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both."

QUESTIONS PRESENTED.

1. Can a conviction stand where the court below applied the Hobbs Act [1] as though the Federal courts have jurisdiction over every extortion or robbery from any victim whose local business uses or has used the channels of interstate commerce?

2. Can a conviction under the Hobbs Act stand when the extortion victim was a local manufacturer of concrete whose only connection with interstate commerce was that he bought sand from a local vendor who obtained the sand from another state and delivered it to victim?

3. Was due process violated because petitioner was indicted on a charge of obstructing the receipt from another state of sand for use in making concrete at a concrete manufacturing plant, but the trial judge permitted the jury to convict him of a different charge for which he was never indicted, namely obstructing the shipment of steel to other states from a steel mill to be constructed partly out of such concrete?

4. Was petitioner's conviction under the Hobbs Act sufficiently supported by evidence that the extortion victim, a local concrete manufacturer, delivered concrete to a local contractor for use in erecting a steel plant which when built would ship steel in interstate commerce?

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1. 18 U. S. C. § 1951.

STATEMENT OF THE CASE.

The jurisdiction of the District Court was invoked because petitioner was charged under a law relating to commerce, the Hobbs Act.

Petitioner was found guilty by a jury in the District Court for the Western District of Pennsylvania on the only count of an indictment charging him with having obstructed, delayed and affected interstate commerce[2] by extortion (R. 7a). He was sentenced to imprisonment for three years and was directed to pay a fine of $5,000.

We draw our recital of the facts partly from certain paragraphs of the Opinion of the Court of Appeals affirming the judgment of the District Court, as follows:

"Defendant, a labor union official, was alleged to have extorted money from a man named William G. Rider, who was in the business of supplying ready-mixed concrete. The Government's version of the facts, accepted by the jury, was that the defendant had come to Rider, following Rider's entering into a profitable contract to supply mixed concrete for the construction of a steel mill in Allenport, Pennsylvania, and that he had threatened Rider with the loss of that conctract if he did not give the defendant fifty cents a cubic yard for all concrete furnished for this job." (R. 528.)

"In making this ready-mixed concrete Rider bought sand which was pumped out of the Ohio River in Ohio, West Virginia or both. The Duquesne Sand Company, which pumped the sand from the river, sold it to Duquesne Slag Products Company. It was on Slag Products Company's land that Rider's operations for the contract mentioned were being carried on. It is sufficient to point out, to settle this part of the case, that some of the barges of

2. The interstate commerce alleged was the movement of supplies and materials between various points in the United States and the site of his plant and more particularly from outside the State of Pennsylvania into the State of Pennsylvania (R. 6a-7a).

sand were brought into Pennsylvania, consigned to Rider and unloaded by him at the place where his work was being carried on. This sand came from outside Pennsylvania. Whether it was consigned directly to Rider or was consigned to Duquesne Slag but delivered to Rider does not matter."[3] (R. 528.)

"During the course of the trial a witness from the steel company whose plant was being built at Allenport gave evidence that when the steel mill was completed it would ship much of its product out of the state of Pennsylvania, notably to Michigan and Kentucky. The court, in its charge, told the jury that if it was satisfied "that Mr. Rider's concrete was used for constructing a mill which would manufacture articles of steel to be shipped in interstate commerce" and if they believed the defendant extorted money from Mr. Rider they were instructed "as a matter of law that there has been a substantial effect on interstate commerce shown by the United States." (R. 529.)

"As said above, the indictment charged interference with interstate commerce on the receiving, not the sending end, except by stating that the sand was for a steel mill." (R. 529.)

In addition the facts relating to commerce are: At the time of the alleged extortionate demand, Rider, the concrete manufacturer, was receiving the sand by railroad car from the Pittsburgh Yard of the Duquesne Slag Products Company, the vendor, intrastate (R. 81a) (R. 82a). Later the sand was received by river barge from Duquesne Slag Company's Brady Street Yard (R. 71a).

3. The latter appears to have been the case (R. 58a-61a, 69a, 78a-80a, 93a).

SUMMARY OF ARGUMENT.

Petitioner's case was submitted to the jury over his objection[4] on two charges. One, obstruction in interstate commerce of the receipt of sand, and two, obstruction in interstate commerce of the delivery of steel from a plant not yet built. The first charge was laid in the indictment. The second was not. Petitioner argues that trial on the charge which was not laid in the indictment violated the Fifth Amendment's guarantees of due process of law, and of indictment.

Petitioner also argues that the court below extended the Hobbs Act unreasonably to embrace interference with prospective distribution of steel from a factory in the course of construction.

Finally, petitioner argues that the court below unreasonably extended the Hobbs Act to embrace extortion from a manufacturer of concrete who received sand intrastate from a supplier who had received it from another state.

If petitioner's final argument is correct, he asks that he be discharged. If petitioner's final argument is not correct, but either one of his first two arguments is correct, he asks for a new trial.

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4. R. 51a-53a, 300a.

ARGUMENT.

1. The Question of How Directly Extortion or Robbery Must Affect Interstate Commerce in Order to Be Covered by the Hobbs Act Was Answered Incorrectly by the Courts Below.

The trial judge told the jury that the necessary effect upon interstate commerce was present if the jury believed either one of two things: first, the evidence with regard to the receipt of sand for use in making the concrete, or, second, the evidence with regard to the future shipment of steel products from the steel mill (R. 287a, 288a).

We submit that both of these two bases were too remote in their connection with interstate commerce. If we are right as to both the sand or concrete and also right as to the steel, the law requires judgment of acquittal. If we are correct as to the steel, but incorrect as to the sand or concrete, the Constitution requires a new trial.

With regard to the steel, we cannot improve upon the language of Chief Judge Biggs (in which Circuit Judge Hastie joined) dissenting from the order denying the petition for rehearing. Chief Judge Biggs said (R. 554): "I am also in accord with the views expressed in Judge Hastie's dissenting opinion. The statute is extended unreasonably to embrace interference with prospective distribution of steel from a factory in course of construction. The Allenport plant of the Pittsburgh Steel Company is not and was not a facility in interstate commerce. Cf. *Mitchell v. Vollmer & Co.*, 349 U. S. 427 (1955); *Archer v. Brown & Root, Inc.*, 241 F. 2d 663, 669 (5 Cir. 1957)."

With regard to the sand or concrete, we point out that not everything which affects interstate commerce is within the power and control of Congress. If the effect upon interstate commerce of a robbery or extortion is merely

indirect or remote, or as in this case that interstate commerce had been used or had been involved, but was not involved at the time of the alleged offense, then the offense is not within congressional power, and there is not jurisdiction in the Federal Court.

Much has been written concerning the congressional control of commerce, and the fundamental and guiding principles have not varied too much since the adoption of the Constitution.

The scope of congressional control over commerce is undoubtedly broad, extending as it does, not only to transactions which can be deemed to be essential parts of a flow of interstate commerce but also to activities intrastate in character which are possessed of a close and substantial relation to interstate commerce. *Fairway Foods, Inc. v. Fairway Markets, Inc., et al.*, 227 F. 2d 193 (C. A. 9).

But there is a limitation because of our dual system upon this congressional power, and this limitation has been very well defined by your Honorable Court in the case of *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 57 S. Ct. 615, wherein it is said (p. 37):

> ". . . the scope of this power must be considered in the light of our dual system of Government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government."

The effect of the decision in the present case is to reject and point toward abolition of dual government under the Constitution.

Whether Congress is justified in regulating an intrastate or local activity which might affect interstate commerce was fully considered by your Honorable Court in the

case of *Schechter Poultry Corp. v. United States*, 295 U. S. 495, 55 S. Ct. 837, in which the Court said (p. 546):

> "In determining how far the federal government may go in controlling intrastate transactions upon the ground that they 'affect' interstate commerce, there is a necessary and well-established distinction between direct and indirect effects. The precise line can be drawn only as individual cases arise, but the distinction is clear in principle.* * * But where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain the domain of state power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people, and the authority of the state over its domestic concerns would exist only by sufferance of the federal government."

Rider purchased, used and disposed of the sand exclusively intrastate. The decision of the Court of Appeals for the Third Circuit in this case is therefore in conflict with the decision of the Court of Appeals for the Ninth Circuit, where that Court in the case of *Fairway Foods, Inc. v. Fairway Markets, Inc., et al.*, 227 F. 2d 193, determined that the activities of retail grocers purchasing and selling their wares exclusively intrastate are not a permissible field for congressional regulation under the Commerce power.

The decision of the Third Circuit is also in conflict with the following decisional dicta of the Second Circuit in the case of *Consolidated Edison Co. v. N. L. R. B.*, 95 F. 2d 390, 393 (modified on other grounds, 305 U. S. 197, 59 S. Ct. 206):

> "Consistently with these principles it can scarcely be doubted that the labor disputes of a local merchant

> will not normally fall within the Board's jurisdiction, even though some part of his stock in trade originates outside the state or some of his local customers are engaged in interstate commerce. In such a case the closing of the merchant's store by a strike of his employees would undoubtedly affect interstate commerce, but the effects would be too remote and indirect to bring his activities within the range of federal regulation."

See also *Application of Bookbinder's Restaurant*, 240 F. 2d 365 (Court of Customs and Patent Appeals), with which the decision in the present case conflicts.

We argue that the power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce. See *McCulloch v. (State of) Maryland*, 4 Wheat. 316, 421, 4 L. Ed. 579. Cf. *United States v. Ferger*, 250 U. S. 199, 39 S. Ct. 445, 63 L. Ed. 936. *United States v. Darby*, 1940, 312 U. S. 100, 118, 61 S. Ct. 451, 459, 85 L. Ed. 609. See also *Wickard v. Filburn*, 1942, 317 U. S. 111, 63 S. Ct. 82, 87 L. Ed. 122. This does not advance the proposition that Congress, entirely apart from delegated powers, may enact measures governing local business. It may do so only when the local activity to be regulated substantially affects interstate commerce. See *Mandeville Island Farms v. American Crystal Sugar Co.*, 1948, 334 U. S. 219, 68 S. Ct. 996, 92 L. Ed. 1328.

We submit that the facts in this case do not bring it within the congressional power, and that the District Court and the majority of the Court of Appeals were in error in deciding that the Hobbs Act applied because the channels of interstate commerce had at some time been used by the local

concrete manufacturer, and might at some future time be used by the steel mill. Also in the case at bar, on the date when the extortionate demand was made, the concrete manufacturer was receiving sand by railroad car from the local supply yard of the vendor intrastate, the sand having originated in another state, but having been unloaded in Pennsylvania, and reloaded in Pennsylvania for intrastate travel to victim's plant (71a, 81a, 82a). We say that here is a case of an isolated extortion. There was no question of any extension of petitioner's alleged conduct so as to constitute a widespread practice or so as to result in the spread of labor unrest that might burden the flow of commerce. There was no question of economic effect upon commerce. The extortion was local, and it would take strained scholastic reasoning to prove that this isolated activity had a substantial or any effect upon interstate commerce. It is against reason and practical judgment to hold that under these facts the extortion was such as is proscribed by the Hobbs Act.

The District Court and the majority of the Court of Appeals disregarded fundamental constitutional principles relating to interstate commerce laid down many times by this Court.

2. Petitioner Was Tried on a Charge for Which He Had Not Been Indicted.

At page 362 of *DeJonge v. Oregon*, 299 U. S. 353, 57 S. Ct. 255, this Court said that "Conviction upon a charge not made would be sheer denial of due process." To which one might add that conviction upon a charge for which defendant has not been indicted violates the very first part of the Fifth Amendment guaranteeing indictment before trial.

In the present case sand had been brought from other states to Pennsylvania where it was used to make concrete for a Pennsylvania steel mill which was supposed to manufacture articles of steel to be sent out into interstate commerce. As the Opinion of the court below concedes (R.

529), the indictment charged interference with interstate commerce on the receiving end of the sand rather than interference with the sending of steel products from the steel mill into interstate commerce.

However, the trial judge instructed the jury that the necessary interference with interstate commerce could be found either on the basis of interference with receipt of the sand or on the basis of interference with the eventual sending out of steel products (287a, 288a).[5]

The Hobbs Act prohibits the obstruction of interstate commerce by means of extortion. Since the States can care for extortion, obstruction of commerce is the essence of the Federal offense. We say that a conviction could not constitutionally be predicated upon an obstruction which was not charged in the indictment.

What the trial judge did was permit petitioner to be tried on a charge for which he was never indicted. As the opinion of Chief Judge Biggs (in which Circuit Judge Hastie joined) dissenting from the order denying rehearing said (R. 554):

> "Stirone was therefore tried on two charges. One, obstruction of the receipt of sand, and two, interference with delivery of steel from a plant not yet built. The first charge was laid in the indictment. The second was not."

No one can tell on which of these two charges the jury based its guilty verdict. The basis may well have been the charge for which petitioner had not been indicted.

The Opinion of the Court of Appeals affirming the conviction cites *Berger v. United States*, 295 U. S. 78, 55 S. Ct. 629 and says the variance was harmless (R. 530).

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5. This was excepted to at 300a. The Opinion of the Court says evidence of obstruction at the sending end was not objected to on the grounds raised herein. But an objection on the ground of immateriality was made (51a-53a). We submit that a failure to object to immaterial evidence would not waive the right to have the case properly submitted to the jury anyway.

But as the dissenting Opinion of Chief Judge Biggs says (R. 554):

> "The doctrine of Berger v. United States, 295 U. S. 78, 81 (1935) cannot cure the error. It is clear in Berger that the crime for which Berger was convicted was within the words of the indictment, see 295 U. S. at pp. 81-83: the objection here is that the allegations of the indictment do not charge the crime for which Stirone was convicted."

In other words, petitioner was tried without a grand jury having made a prima facie finding of the charge ultimately submitted to the petit jury. We think this violated due process and, quite apart from due process, such a procedure also violated that part of the Fifth Amendment which requires indictment.

There remain the additional requirements of due process as to (a) notice, and (b) protection from double jeopardy. As to these, this Court laid down the law at page 82 of *Berger v. United States*, *supra*, as follows:

> "The true inquiry, therefore, is not whether there has been such a variance as to 'affect the substantial rights' of the accused. The general rule that allegations and proof must correspond is based upon the obvious requirements (1) that the accused shall be definitely informed as to the charges against him, so that he may be enabled to present his defense and not be taken by surprise by the evidence offered at the trial; and (2) that he may be protected against another prosecution for the same offense."

If either of the two requirements of the *Berger* case has not been met, conviction in the present case cannot stand.

First, we inquire whether the variance was such as to deprive petitioner of his protection against another pros-

ecution for the offense of having obstructed the sending out of the steel products into interstate commerce. It certainly would not. As the Court of Appeals for the Third Circuit said at page 130 of *United States v. Kenny*, 236 F. 2d 128:

> "Where the state charges an accused with two related offenses, an acquittal of one precludes subsequent prosecution on the other, if that acquittal was the result of decision in favor of the defendant on an issue which would be essential to the case against him on the second charge."

If Stirone had been acquitted, it would have been impossible to say whether or not the acquittal resulted from a decision in his favor on the issue of whether he obstructed the shipment of the steel products.[6] The verdict would have been not guilty as charged. That kind of obstruction was not charged in the indictment.

Second, we say that the other requirement of the *Berger* case has not been met, i.e., the requirement that the accused be definitely informed as to the charges against him, so that he may present his defense and not be taken by surprise.

Where a name is misspelled in an indictment, or where an incorrect dollar amount is cited for the value of stolen property, a variance between allegata and probata does not mean the defendant has not been sufficiently informed as to the charges against him. But the present case is different. In the present case, petitioner was charged with obstructing the receipt of sand in interstate commerce and was convicted of obstructing the shipment of steel products in in-

---

6. On the other hand, it cannot be said that Stirone's conviction was based on an obstruction of the shipment of steel products. It may have been based on the alternative theory of the obstruction of receipt of sand. Since the two offenses involved different factual elements, the conviction of one offense would not bar trial for the other offense. The cases so holding are legion.

terstate commerce. This was not a case where the obstruction was proved to have been done in a different way from that charged. Here an altogether different obstruction was shown. And it is apparent from the face of the statute that obstruction of commerce is the essence of the offense.

The Opinion of the Court of Appeals says (R. 530) that the record discloses that counsel was prepared for the introduction of the testimony that the shipment of steel had been obstructed, rather than surprised by it. We know of no portion of the record disclosing any such thing and we note that no defense was made to the charge that the flow of steel products into interstate commerce had been dammed up.

Accordingly, we think both tests laid down in the *Berger* case must be resolved in petitioner's favor. The conviction should not be permitted to stand if we are correct about either test.

By affirming the conviction in the present case, the majority of the court below simply have set aside the rule that there cannot be a conviction upon a charge not made. Petitioner submits that intervention by this Court is required in order that there be reinstated the right of Americans to be tried only after notice of the charges against them.

If the Government follows its Brief in Opposition to our Petition for Certiorari, it may argue that under the Anti-Racketeering Act of 1934 (the predecessor of the Hobbs Act) Judge Learned Hand, in *United States v. Compagna*, 146 F. 2d 524, stated at p. 527:

> "* * * If these were the facts, the business was interstate as matter of law, and the question should not have been submitted to the jury; and since nobody contested the facts, but only their legal effect, it was unnecessary for the judge to say anything on the issue. * * *"

Then the Government may argue that this Court should see also under the later Act, *Hulahan v. United States*, 214

F. 2d 441, 446 (C. A. 8); *United States v. Green*, 246 F. 2d 155 (C. A. 7); *United States v. Lowe*, 234 F. 2d 919; *United States v. Varlack*, 225 F. 2d 665 (C. A. 2).

To this we answer simply that the facts were contested by petitioner's plea of not guilty, which is the only way we know of to plead the general issue in a criminal case. Judge Hand said in *United States v. Compagna*, as quoted above, that "nobody contested the facts." If Judge Hand meant Compagna had agreed to the facts Compagna is distinguishable from Stirone, for the latter has agreed to no part of the charge against him. But if Judge Hand meant that a plea of not guilty is not sufficient to raise a question of fact as to whether interstate commerce had been obstructed on a criminal trial for obstructing it, then Judge Hand was not correct.

The fact that the sand referred to in the exhibits was actually received depended upon oral testimony. The credibility of oral testimony is always for the jury. In a proper case the court may and should say to the jury that if they believe the oral testimony, they should find the alleged interference with interstate commerce (provided of course that the jury also believes the evidence of extortion). But only in that sense is the question of whether commerce was obstructed a question of law for the court. This is recognized by *Hulahan*, *Green*, *Lowe*, and *Varlack*, cited above. See *Hulahan v. United States*, 214 F. 2d 441, 446; *United States v. Green*, 246 F. 2d 155, 160, 161; *United States v. Lowe*, 234 F. 2d 919, 922, 923; *United States v. Varlack*, 225 F. 2d 665, 670, 671.

The facts on the commerce question were for the jury and it was constitutional error for the trial judge to have submitted the commerce question to that jury on an alternative basis not charged in the indictment.

CONCLUSION.

For the foregoing reason, petitioner submits that he itled to be discharged because a sufficient interference the receipt of sand in interstate commerce was not , and that he is entitled to a new trial if either or both other arguments are correct and his argument about nd is not correct.

Respectfully submitted,

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No. 35

In the Supreme Court of the United States

OCTOBER TERM, 1959

NICHOLAS A. STIRONE, PETITIONER

v.

UNITED STATES OF AMERICA

WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

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No. 35

NICHOLAS A. STIRONE, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the court of appeals (R. 527–539, 553–554) are reported at 262 F. 2d 571. The opinion of the district court (R. 304–319) is reported at 168 F. Supp. 490.

JURISDICTION

The judgment of the court of appeals was entered on December 9, 1958 (R. 539). A petition for rehearing was denied on January 27, 1959 (R. 555). The petition for a writ of certiorari was filed on February 24, 1959, and was granted on April 27, 1959 (R. 556), 359 U.S. 978. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the "commerce" issue in this case gave rise to a jury question.

2. Whether, as a matter of law, there was sufficient evidence of effect upon interstate commerce to support application of the Hobbs Anti-Racketeering Act.

3. Whether there was prejudicial variance between the language of the indictment relating to interstate commerce and the proof and instructions on that subject.

STATUTE INVOLVED

18 U.S.C. 1951 provides in part:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.
>
> (b) As used in this section—
>
> * * * * *
>
> (3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

The pertinent antecedent provision of the Anti-Racketeering Act of 1934 and amendments are set out in the Appendix, *infra*, pp. 39–41.

STATEMENT

I: THE EXTORTION.

Petitioner was the president of the Laborers' District Council of Western Pennsylvania, which was composed of local unions of common laborers affiliated with the International Hod Carriers, Building and Common Laborers' Union of America (R. 20–21, 29). In this capacity, he was the spokesman for the representatives of unions covering eleven counties (R. 28–29). He was also president of local union 1058 of the International Hod Carriers (R. 22) and the president of the Heavy Construction Council, which negotiated wages and working conditions for the Hod Carriers, Teamsters, Carpenters, and Engineers Unions with construction companies covering 33 counties of Western Pennsylvania (R. 22–25).

William A. Rider was engaged in the business of preparing and selling ready-mixed concrete [1] under the trade name of Rider Supply Company (R. 83). The Rider Supply Company had a subcontract to supply Ragnar Benson Company with all ready-made concrete needed for the construction of a hot strip steel mill which Ragnar Benson was erecting for the Pittsburgh Steel Company (R. 45–46). Under this subcontract, concrete was supplied from September, 1951 to March, 1954 (R. 169–172).

---

[1] Made of slag, sand and cement (R. 88). The ingredients are mixed in a batching plant (R. 89) and delivered in mixer trucks to the building site (R. 90).

The charge against petitioner was that, in violation of 18 U.S.C. 1951, he obstructed interstate commerce by extortion, *i.e.*, by obtaining money from Rider induced by the wrongful use of threats of labor disputes and threats of the loss of his contract, causing Rider to fear that preparation of the concrete would be delayed or altogether prevented (R. 7–8). The evidence against petitioner was that he extorted 50 cents for each cubic yard of concrete which was supplied pursuant to the subcontract under the threat that the payment was necessary to keep Mr. Rider "out of labor trouble" and "to hold on to the contract" (R. 105, 137). The money thus paid from 1951 through December 1953, amounted to $31,274.13 (R. 175). Petitioner was found guilty and sentenced to three years' imprisonment and fined $5,000 (R. 337).

A large part of the trial was devoted to evidence as to whether or not petitioner had made the threats as claimed. That issue, however, is not presently before this Court. The issues here involve the proof as to interstate commerce and the charge of the trial court on that subject.

II. THE INTERSTATE COMMERCE

A. *The Indictment*

The single count indictment charged in pertinent part (R. 6):

> 1. That at all times hereinafter mentioned a part of the interstate commerce of the United States has consisted of the transportation between the several states of materials and supplies for use in the making of ready mixed

concrete used in the construction and erection of a factory or plant for processing of steel.

2. That at all times hereinafter mentioned, William G. Rider was a party to a contract to supply ready mixed concrete for the erection of a steel processing plant at Allenport, Pennsylvania, and, for the purpose of performing said contract, caused supplies and materials to move in interstate commerce between various points in the United States and the site of his plant for the manufacture or mixing of ready mixed concrete, and more particularly, from outside of the State of Pennsylvania into the State of Pennsylvania.

It was charged that petitioner, knowing of the contract, willfully obstructed and delayed interstate commerce "and the movement of the aforesaid materials and supplies in such commerce" by his threats of labor disputes and "threats of the loss of, and obstruction and prevention of, performance of his contract to supply ready mixed concrete."

B. *Evidence as to Interstate Commerce*

1. Sand

Under Mr. Rider's lease for his business premises, he was required to purchase his sand requirements from the Duquesne Slag Company (R. 109). The Duquesne Slag Products Company purchased over 90% of all the sand it sold from the Duquesne Sand Company (R. 71).

The Duquesne Sand Company owned one dredge boat—the "Admiral" (R. 61). During the period involved in the indictment, this boat dredged sand from

the Ohio River exclusively in the States of West Virginia and Ohio (R. 48–49). The entire output of sand so dredged was sold to the Duquesne Slag Products Company (R. 61, 68). The sand was cleaned and then shipped by barge to Pittsburgh (R. 56) or sent by barge and stored at Leetsdale, Pennsylvania (R. 65).

In 1951, the Duquesne Slag Company sometimes delivered sand to Rider by transshipping it by rail from their Brady Street yard to the Belle Vernon plant (both in Pennsylvania) where Rider had his business (R. 81–82, 90). During the remaining years, the sand was transported by barge, either by transshipping from the Slag Company's Brady Street yard to Rider or by direct consignment to Rider (R. 71, 79–80).

2. Steel

George Herbert Keisling, the Assistant Controller of the Pittsburgh Steel Company, testified that the product—hot rolled sheet and strip—of the steel mill that was built, was used in the automotive and appliance industry (R. 49–50) and was shipped to Michigan and Kentucky (R. 53). About 80% of the product of the hot strip mill was shipped interstate (R. 55). The basic material for this mill—iron ore—came largely from Minnesota and a small portion from South America (R. 53). This particular hot strip steel mill began operations in March, 1953 (R. 54) (before the last payment to petitioner in December, 1953).

C. *The Court's Instructions to the Jury*

The petitioner made no requests for jury instruc-

tions (R. 280, 299). The court charged the jury in pertinent part as follows (R. 286–288):

> Since it is your exclusive function to decide what the facts are, it will be for you to determine the facts relating to the interstate commerce aspect of this case. It is only if there has been one of these effects on interstate commerce that an offense against the laws of the United States has been committed, because interstate commerce is the basis of the federal jurisdiction in this case.
>
> At the opening of the case, the Government introduced evidence relating to the dredging and shipment of sand which it contends was used in the manufacture of the cement which Mr. Rider used in performing the Ragnar-Benson contract which has been the subject of much testimony in this case.
>
> It is the Government's contention that all or substantially all of the sand so used has been shipped in interstate commerce. It is also the position of the Government that concrete supplied by Mr. Rider containing the sand shipped in interstate commerce was being used in the construction of a plant which, when in operation, would produce articles of steel to be shipped in interstate commerce.
>
> Consider the evidence of the Government on this question in the light of any other circumstances or other evidence bearing on the interstate nature of the shipment of sand or the sand used in making concrete supplied by Mr. Rider and on the use to which the mill under construction would be and was put. Then if you are satisfied beyond a reasonable doubt that the sand has been shipped from another state

> into Pennsylvania by any means of transportation and was used in making concrete supplied by Mr. Rider and that Mr. Stirone extorted money from Mr. Rider, the alleged extortion would be an act which obstructed, delayed or affected interstate commerce, and the movement of commodities in interstate commerce.
>
> Or if you are satisfied beyond a reasonable doubt that Mr. Rider's concrete was used for constructing a mill which would manufacture articles of steel to be shipped in interstate commerce and if you also believe that the defendant extorted money from Mr. Rider, you are instructed as a matter of law that there has been a substantial effect on interstate commerce shown by the United States. In other words, if you find the facts to be as the Government contends, interstate commerce has been affected, obstructed and delayed.

The petitioner objected to this charge as follows (R. 300):

> * * * I also except to the Court's charge as to interstate commerce, especially as to the sand and particularly to the Pittsburgh Steel mill.

III. THE OPINIONS BELOW

A. *The District Court*

The district judge overruled the petitioner's post-trial motions (R. 304–319; 168 F. Supp. 490). Its opinion framed the pertinent issues and holdings as follows (R. 305–307):

> In the indictment it was charged that the defendant by his coercive actions obstructed, delayed and affected interstate commerce and

the movement of materials and supplies—i.e., sand, in interstate commerce. It was then proved at the trial that sand used by Rider in manufacturing ready-mixed concrete and purchased from Duquesne Slag Products Company had without question been transported in interstate commerce, and secondly, that steel articles produced at the plant after construction had been transported in commerce to the centers of the appliance and automotive industries outside the State of Pennsylvania. A sufficient foundation for introduction of both kinds of proof was laid in the indictment.

Defendant's denial that interstate commerce was affected by his actions is based in part upon an argument that interstate commerce ended with the delivery of the sand in Pennsylvania; that the interstate character of the sand was lost when it was delivered to and stored by Duquesne Slag Products Company and Rider; and that the sand lost its identity as a separate article of commerce when it was mixed with other ingredients to form a new product, ready-mixed concrete. * * * The court correctly told the jury that if the government's facts were believed, interstate commerce had been affected by the conduct of the defendant. Cf. *United States* v. *Lowe*, 3 Cir., 1956, 234 F. 2d 919, 922–923, cert. denied, 1956, 352 U.S. 838. That statement was based upon a premise that a deliberate act which tends to prevent articles from being used once they have reached their destination after being shipped in interstate commerce dams up the stream of commerce and delays, obstructs and affects interstate commerce as surely as though the same act had cut off the supply at its source. * * *

Defendant also urges that the "new construction" doctrine prevents consideration of the interstate shipment of products manufactured at the plant following its completion in determining whether the extortion here affected interstate commerce. That doctrine appears no longer to be controlling, in cases arising under the Federal Employers' Liability Act and the Fair Labor Standards Act where it arose. *Southern Pacific Co.* v. *Gileo*, 1956, 351 U.S. 493; *Mitchell* v. *G. W. Vollmer & Co., Inc.*, 1955, 349 U.S. 427. Nor was it considered in *Hulahan* v. *United States*, 214 F. 2d 441, under circumstances similar to the instant case. There is no reason for adopting so restrictive an interpretation of the act.

B. *The Court of Appeals*

The court of appeals affirmed the conviction with one judge dissenting (R. 527–539; 262 F. 2d 571–580). A petition for rehearing was denied with two judges dissenting (R. 553–555; 262 F. 2d at 580).

In the majority's view, the extortion affected commerce because one of the principal ingredients used by Rider in making concrete was sand which, in "considerable quantity", came directly from an out-of-state source (R. 528). The majority was also of the opinion that the threatened interference with the building of the steel mill—which, upon completion, was to produce goods for commerce—was sufficient to bring the offense within the statute (R. 530–531). It held finally that, if there was variance between the indictment and the proof so far as steel commerce was concerned, it did not constitute reversible error be-

cause the defense was not surprised or prejudiced by the line of proof offered (R. 529–530).

The dissenters did not take issue with the proposition that sand commerce was established by the proof. They were of the view, however, that the Act does not reach "new construction" (even though the facility in process of construction will produce goods for commerce) and that the verdict must fall because the case was submitted to the jury upon alternative theories as to commerce (R. 536–537, 539). Additionally, the dissenters were of the opinion that the indictment did not charge interference with commerce in steel and that there was a fatal variance between the indictment and the proof (R. 554).

SUMMARY OF ARGUMENT

I

The gist of the crime charged in this case is extortion. To establish federal jurisdiction under the Hobbs Act, it is necessary, of course, that there be an effect upon interstate commerce. But that is a jurisdictional requirement, not one which goes to the nature or substance of the criminal conduct.

Where, as here, the operative facts (as to transportation, shipments and the like) which bear on the commerce issue are not contested and the only dispute is whether there was an effect upon interstate commerce as a matter of law, the question is one appropriate for determination by the trial judge. As Judge Learned Hand stated in another anti-racketeering case in which the facts relating to commerce were uncontroverted, "the business was interstate as [a]

matter of law, and the question should not have been submitted to the jury * * *." *United States* v. *Compagna,* 146 F. 2d 524, 527 (C.A. 2), certiorari denied, 324 U.S. 867.

If we are correct in our view that there was no need to submit the commerce issue to the jury at all, it suffices that the extortionate conduct affected commerce in sand (a point as to which there was no disagreement among the judges in the court of appeals). On that premise, it becomes unnecessary to consider whether the dissenting judges were correct in believing (1) that the facts were not legally sufficient to show an effect upon commerce in steel and (2) that commerce in steel was not sufficiently alleged in the indictment.

II

In any event, we undertake to show that both commerce in sand and commerce in steel were necessarily affected when Rider (the victim of the extortion) was compelled to pay tribute in order to avoid interference with his contract to supply concrete to the steel mill construction project in Pittsburgh.

A. Preliminarily, we point out that Congress, in enacting the Anti-Racketeering Laws, has purposefully exercised the full measure of the constitutional commerce power. The original 1934 Act proscribed extortion "in any way or in any degree affecting trade or commerce" and defined commerce in terms of the "constitutional jurisdiction" of the United States. The statutory language has undergone various changes as a result of amendment (in 1946) and codification (in 1948), but the scope of commerce

coverage has not been altered. In its present form, the Act reaches any person who "*in any way or degree* obstructs, delays, or affects commerce or the movement of any article or commodity in commerce," and it covers *all* "commerce over which the United States has jurisdiction" (emphasis added).

B. The effect upon commerce in sand is clear. Sand is a major ingredient of concrete. Rider obtained his sand supply from outside Pennsylvania, substantial quantities of it moving directly to his premises by barge. Interference with his ability to perform contracts to supply concrete would necessarily be reflected in his need for sand and in his sand purchases. The fact that the extortion would affect the victim's requirements for a commodity shipped in interstate commerce establishes federal jurisdiction, without more. See, *e.g.*, *Labor Board* v. *Denver Bldg. & Const. Trades Council*, 341 U.S. 675, 684; *United States* v. *Employing Plasterers Assn.*, 347 U.S. 186, 189. Although it is unnecessary to go further, we also believe that the legal situation is no different with respect to out-of-state sand which moved to Rider through intermediaries; the theory of cases like *Walling* v. *Jacksonville Paper Co.*, 317 U.S. 564, applies here with full force.

C. Effect upon commerce in steel rests upon (1) the fact that Rider had a contract to do the concrete work involved in the construction of a steel mill; (2) the fact that interference in the performance of this work would necessarily impede the entire project; and (3) the fact that the steel mill (which actually began its operations before Rider's contract was com-

pleted) sent the major portion of its produce into the channels of interstate commerce. This is not to argue that all aspects of the construction industry are broadly subject to federal regulation. It is to say that Congress may protect interstate trade and commerce from criminal activities which affect that commerce irrespective of whether the "squeeze" is locally applied.

Cases arising under the National Labor Relations Act are apposite. The coverage of that statute, like the coverage of the Hobbs Act, is coextensive with the constitutional commerce power. Moreover, since the power of organized labor finds fundamental protection in federal law, it is highly appropriate to look to the Labor Board's jurisdiction when one considers federal jurisdiction over persons who seek to misuse the power of organized labor by threatening to invoke it for their private criminal purposes rather than for legitimate ends. It is thus pertinent to ask—Would the Labor Board be empowered to exercise jurisdiction over a labor dispute involving the employees of a building contractor engaged in constructing a steel mill for a steel company which ships its products in interstate commerce? The cases demonstrate that the answer is affirmative. They leave no doubt that the Board may deal with labor disputes involving intrastate companies which supply facilities, goods or services to others who, in turn, engage in interstate commerce. See, *e.g.*, *Bus Employees* v. *Wisconsin Board*, 340 U.S. 383; *Labor Board* v. *Thomas Rigging Co.*, 211 F. 2d 153 (C.A. 9), certiorari denied, 348 U.S.

871. And compare cases arising under the Fair Labor Standards Act, discussed *infra*, pp. 33–34.

We are mindful of the cases, arising principally under the Federal Employers' Liability Act, which took the view that "new construction" is not commerce even though the work, when completed, will become a part of commerce. That statute, which is "of another vintage" (*Mitchell* v. *C. W. Vollmer & Co.*, 349 U.S. 427, 429), was far narrower, however, in its provision for coverage. Morever, a recent decision of this Court has explicitly rejected the doctrine in a case involving the rights of a railroad employee engaged in building new cars. *Southern Pacific Co.* v. *Gileo*, 351 U.S. 493, 500.

III

Petitioner's claim of variance rests upon the assertion that effect upon commerce in steel was not sufficiently alleged in the indictment. It is true that the indictment focuses on commerce in sand. However, we point out (1) that direct reference is made to the contract to supply concrete for the steel mill and (2) more importantly, that the charging portion of the indictment alleges in general terms the obstruction of interstate commerce. Since the indictment would not be fatally defective as a matter of law if it simply alleged an effect upon commerce without any "clarifying details" (*United States* v. *Varlack*, 225 F. 2d 665, 670 (C.A. 2); compare *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 250 ("variation between the means charged and the means utilized is not fatal")), the question is whether, under the cir-

cumstances, petitioner was prejudiced. Under the criteria stated in *Berger* v. *United States*, 295 U.S. 78, 82, this question has two aspects: (1) Was petitioner impeded in the presentation of his defense? (2) Was he protected against a second prosecution for the same offense?

As the court of appeals held, after careful examination of the record, petitioner was not impeded in making out his defense. The evidence as to steel commerce (brief testimony by an official of the Pittsburgh Steel Company that the Allenport plant ships approximately 80 percent of its produce to destinations outside of Pennsylvania) was given early in the trial for purposes which were made perfectly plain by the prosecution. Petitioner objected on grounds of relevancy, but gave no indication that he challenged the accuracy of the testimony, that he wished to introduce rebuttal evidence on the point, or that he desired time in order to do so.

Nor has petitioner any basis for claiming a risk of double jeopardy. One act of extortion is one crime, no matter how numerous the ways, direct or incidental, in which commerce may be affected thereby. The Hobbs Act has never been otherwise interpreted. And *Ladner* v. *United States*, 358 U.S. 169, makes it evident that this Court would not sanction a multiplication of offenses in the present situation.

ARGUMENT

I. IN THIS CASE, THE "COMMERCE" ISSUE DID NOT GIVE RISE TO A JURY QUESTION

The gist of the crime charged in this case is extortion. As we point out *infra* (pp. 21–25), it was the

purpose of Congress to reach any extortion that comes within the scope of the federal commerce power. This means, to be sure, that there must be an effect or burden upon commerce for the case to be one within the federal jurisdiction. But this is a jurisdictional requirement, not one which goes to the substance of the criminal conduct.

We shall assume that it is appropriate to submit to the jury for its determination any factual issue which may underlie the determination as to effect upon interstate commerce.[2] We believe, however, that where there is no contested issue as to the operative facts (the facts as to transportation, shipments and the like) and the only question is the legal characterization to be given to the established course of commercial conduct, there is no necessity whatever to submit to the jury the "commerce" issue. If we are correct in our contention that there was no need in this case to submit that issue to the jury at all and that the sole function of the jury, in the circumstances, was to determine whether there was extortion, it becomes unnecessary for the Court to consider whether the trial court erred in instructing the jury as to "steel" commerce. Stated otherwise, if we are correct in Point I, the only remaining question is whether the

[2] This is characteristically done by charging a jury, "If you believe that such and such transactions took place, then I charge you as a matter of law that there was an effect upon interstate commerce." See, *e.g.*, the following cases arising under the Hobbs Act. *United States* v. *Green* 246 F. 2d 155, 160–161 (C.A. 7), certiorari denied, 355 U.S. 871; *Hulahan* v. *United States*, 214 F. 2d 441, 445–446 (C.A. 8), certiorari denied, 348 U.S. 856; *United States* v. *Lowe*, 234 F. 2d 919 (C.A. 3), certiorari denied, 352 U.S. 838; *United States* v. *Varlack*, 225 F. 2d 665 (C.A. 2).

evidence as to *either* aspect of commerce ("sand" commerce *or* "steel" commerce) was legally sufficient to bring the case within the ambit of the Hobbs Act.

Our starting point is that there was uncontroverted testimony showing (1) that there were continuous sand movements from an out-of-state source to Rider, (2) that the sand was thereafter used by Rider to manufacture concrete, and (3) that the concrete was used in constructing a steel mill which engaged, in turn, in the production of goods for commerce. The testimony as to sand movements was provided by a witness from the United States Army Corps of Engineers (R. 47–49). It was corroborated by a witness who was an officer of the sand company and of the barge company (R. 55–69). It was further corroborated by an officer of the slag company (R. 69–82). The testimony of these witnesses was nowhere denied. Indeed, it was not in the least questioned by the petitioner's own witness, Robert O. Dierker, president of the slag company which sold the sand to the extortion victim, a man who was in a position to dispute any erroneous testimony on the point (R. 212–215, 459–460). The testimony as to the use of the sand in making concrete for the steel mill construction job appears at R. 87–89, and is likewise undisputed. The testimony that the steel mill produced goods for commerce appears at R. 49–55, and is nowhere controverted in the record.

Where, as here, there is no contested issue of fact underlying the jurisdictional issue and room only for argument as to the legal inferences to be drawn from the established facts, the matter, we submit, is

one appropriate for determination by the court. As stated by the late Chief Judge Parker, "One cause of failure in jury trials results from burdening juries with matters that they are not qualified to determine."[3] In a case arising under the Anti-Racketeering Act of 1934,[4] predecessor of the present statute, Judge Learned Hand stated (*United States* v. *Compagna*, 146 F. 2d 524, 527 (C.A. 2), certiorari denied, 324 U.S. 867):

> * * * If these were the facts, the business was interstate as [a] matter of law, and the question should not have been submitted to the jury; and since nobody contested the facts, but only their legal effect, it was unnecessary for the judge to say anything on the issue. * * *

Cases arising in other contexts support this conclusion. *Blumenthal* v. *United States*, 88 F. 2d 522, 528 (C.A. 8), involved a charge of theft from a common carrier engaged in interstate commerce; whether the carrier was a common carrier was held to be a

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[3] Parker, *Improving the Administration of Justice*, 27 A.B.A. Journal 71, 74. See, also, Broeder, *The University of Chicago Jury Project*, 38 Neb. Law Rev. 744, 754–760; Zeisel, Kalven, Jr., and Buchholz, *Delay in the Court* (1959); Green, *Judge and Jury* (1930), p. 351; Orfield, *Criminal Procedure from Arrest to Appeal* (1947), p. 449.

[4] That Act provided in pertinent part (Appendix, *infra*, p. 39):

"Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—

(a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services. * * * shall, upon conviction thereof, be guilty of a felony * * *."

question for the court, the evidence bearing on this subject being undisputed. In *Nordgren* v. *United States*, 181 F. 2d 718, 721 (C.A. 9), a prosecution for offering a bribe to a United States officer, it was held that the question whether the offeree was such an officer need not be left to the jury where there is no controversy as to facts pertaining to the functions he was performing. See, also, *United States* v. *Mura*, 191 F. 2d 886 (C.A. 2); *United States* v. *Jonikas*, 197 F. 2d 675 (C.A. 7), certiorari denied, 344 U.S. 877; *Schwachter* v. *United States*, 237 F. 2d 640 (C.A. 6). Cf. *Mitchell* v. *Denton*, 224 F. 2d 596 (C.A. 5); *Rogers* v. *Douglas Tobacco Board of Trade, Inc.*, 266 F. 2d 636, 643 (C.A. 5).[5]

II. THE EVIDENCE AS TO BOTH SAND AND STEEL COMMERCE WAS LEGALLY SUFFICIENT TO ESTABLISH THAT THE OFFENSE WAS WITHIN THE REACH OF THE FEDERAL ACT

If, as argued above, there was no jury question as to the facts bearing on the commerce issue, but only a question for the court as to whether uncontested facts showed interstate commerce as a matter of law, it suffices to show that the evidence was legally suffi-

[5] It is, of course, no novel constitutional doctrine that some issues in a criminal trial are for the court to determine, even though they may involve an interpretation of facts. Thus, the competency of the tribunal and the materiality of the question falsely answered are elements in the offense of perjury, but nonetheless issues for the court. *United States* v. *Williams*, 341 U.S. 58. And see *Sinclair* v. *United States*, 279 U.S. 263, 298 ("The question of pertinency * * * was rightly decided by the court as one of law. It did not depend upon the probative value of evidence").

cient to establish an effect upon *either* interstate commerce in sand (which all judges below found to be established) *or* interstate commerce in steel (which a majority found). In this portion of the brief, we shall argue that the evidence was legally sufficient to establish both. We urge preliminarily that Congress, in enacting the statute, proposed to exhaust the federal commerce power and that accordingly the Act is not to be narrowly or grudgingly construed.

A. THE ANTI-RACKETEERING LAWS ENACTED BY CONGRESS WERE DESIGNED TO EXTEND TO THE FULLEST REACH OF THE FEDERAL POWER

The origin of the present statute is the Anti-Racketering Act of 1934. That Act was amended by the Hobbs Act in 1946, and the Hobbs Act, in turn, was codified in 1948. All of the relevant history shows a plain and continuing purpose to exhaust the full constitutional power of Congress over commerce.

The Anti-Racketeering Act of 1934 as originally passed, 48 Stat. 979, read in pertinent part (see Appendix, *infra*, pp. 39–40):

> That the term "trade or commerce", as used herein, is defined to mean trade or commerce between any States, with foreign nations, in the District of Columbia, in any Territory of the United States, between any such Territory or the District of Columbia and any State or other Territory, *and all other trade or commerce over which the United States has constitutional jurisdiction.*
>
> Sec. 2. Any person who, *in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce*—

> (a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, * * *
>
> * * * * *
>
> (d) * * * shall, upon conviction thereof be guilty of a felony * * *. [Emphasis added.]

In view of the explicit statutory reference to "constitutional jurisdiction," it is unnecessary to examine the legislative history at length. We note briefly that the original Act was one of thirteen bills submitted by the Copeland Committee after its investigation of racketeering (see discussion in *United States* v. *Local 807*, 315 U.S. 521, 528–529), and that both the relevant House and Senate Reports reflect a purpose to reach the proscribed types of conduct to the full extent that the commerce power permits.[6]

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[6] The House Report accompanying the bill quotes a letter from Attorney General Homer Cummings, which stated (H. Rep. No. 1833, 73rd Cong., 2d Sess., p. 2):

"The Sherman Antitrust Act is too restricted in its terms and the penalties thereunder are too moderate to make that act an effective weapon in prosecuting racketeers. The anti-racketeering bill would extend the Federal jurisdiction in those cases where racketeering acts are related to interstate commerce and are therefore of concern to the Nation as a whole."

The Senate Report, quoting a memorandum from the Department of Justice, declares (S. Rep. No. 532, 73rd Cong., 2d Sess., p. 1):

"The accompanying proposed statute is designed to avoid many of the embarrassing limitations in the wording and interpretation of the Sherman Act, and *to extend Federal jurisdiction over all restraints of any commerce within the scope of the Federal Government's constitutional powers.* * * *" (Emphasis added.)

This was read on the Senate floor in response to a request for an explanation of the bill (78 Cong. Rec. 5735).

The Hobbs Act of 1946, an amendment of the 1934 statute,[7] was designed to include the type of racketeering which this Court held outside the 1934 Act in *United States* v. *Local 807*, 315 U.S. 521, and the amendment and debates are concerned almost wholly with the scope of the Act in connection with labor practices.[8]

The scope of the statute in relation to commerce was not narrowed. The 1946 amendment, 60 Stat. 420, read in pertinent part (Appendix, *infra*, pp. 40–41):

> SEC. 1. As used in this title—
>
> (a) The term "commerce" means (1) commerce between any point in a State, Territory, or the District of Columbia and any point outside thereof, or between points within the same State, Territory, or the District of Columbia but through any place outside thereof, and (2) commerce within the District of Columbia or any Territory, and (3) *all other commerce over which the United States has jurisdiction;* and the term "Territory" means any Territory or possession of the United States. [Emphasis added.]
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> * * * * * *
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> SEC. 2. Whoever *in any way or degree* obstructs, delays, or affects commerce, or the movement of any article or commodity in com-

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[7] See H. Rep. No. 238, 79th Cong., 1st Sess., p. 1; 91 Cong. Rec. 11846.

[8] See H. Rep. No. 238, *supra;* remarks of Congressman Hancock, 91 Cong. Rec. 11,900, Congressman Summers, 91 Cong. Rec. 11,909, Congressman Jennings, 91 Cong. Rec. 11,911, Congressman Cox, 91 Cong. Rec. 11,841, and Congressman Michener, 91 Cong. Rec. 11,842. And see *United States* v. *Green*, 350 U.S. 415, 419.

> merce, by robbery or extortion, shall be guilty of a felony. [Emphasis added.]

Finally, in 1948, solely by codification, the Act assumed its present form. Again there has been a rearrangement of terms, but they have the identical scope, in terms of commerce, as the original Act. The 1948 Act, 62 Stat. 793, 18 U.S.C. 1951, provides in pertinent part:

> (a) Whoever *in any way or degree* obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both. [Emphasis added.]
>
> (b) As used in this section—
>
> * * * * *
>
> (3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and *all other commerce over which the United States has jurisdiction.* * * * [Emphasis added.]

By 1946, the commerce power had been very broadly interpreted. Against this background, Congress made explicit in the re-written Hobbs Act its continuing purpose to exhaust the scope of federal power—to

cover "*all*" interstate commerce and the specified conduct affecting such commerce "*in any way or degree.*" There is thus no warrant in the words or the history to read this Act narrowly.

B. INTERSTATE COMMERCE IN SAND WAS AFFECTED

As already noted, none of the judges in the court below doubted that petitioner's acts obstructed the interstate commerce involved in the transportation of the sand necessary to make the concrete, and that this obstruction constituted an offense. Petitioner's threat was to make Rider lose his contract if the extortionate demand was not satisfied. Without the contract, Rider would not have bought the sand which he used to make the concrete. His sand supply came from outside the State of Pennsylvania, some of it being delivered directly to Rider by barge. Assuming that the prime contractor in the case at bar might have obtained concrete from someone else, it is still true that the interstate commerce involved in the sand that went to Rider would have been affected. See *Labor Board* v. *Bradford Dyeing Assn.*, 310 U.S. 318, 326. In short, the fact that the extortion would affect the victim's requirements for a commodity (sand) shipped in interstate commerce adequately supports federal jurisdiction. *Labor Board* v. *Denver Bldg. & Const. Trades Council*, 341 U.S. 675.

While the consignment of certain sand barges directly to Rider makes the involvement with a commodity shipped in interstate commerce obvious, we believe that the legal situation is no different with respect to the balance of the sand. In *Walling* v.

Jacksonville Paper Co., 317 U.S. 564, for example, this Court held that the Fair Labor Standards Act (which is not in terms as broad as the Hobbs Act) covered certain employees of a wholesale paper company who were engaged in delivering goods from the company's warehouse to customers within the same state, even though there had been a temporary pause of the goods at the warehouse. The goods had been procured outside the state upon prior orders from, or pursuant to, contracts with such customers. It was held that such goods retained their character as interstate goods until finally delivered to the customers, and that they were not divested of that character by the stop at the warehouse, or by the fact that the company regarded them as stock in trade, or by the circumstance that title passed to the wholesale paper company upon delivery at its warehouse.

Nor does an intervening intrastate sale, if such there was in the case at bar, insulate petitioner from federal jurisdiction. In *United States* v. *Sullivan*, 332 U.S. 689, a retail druggist was prosecuted for misbranding sulfathiazole tablets by removing them from their original boxes and putting them into new boxes without the proper labels. Despite the fact that he had purchased them from a wholesaler within the state, and that some six months had elapsed from the date of completion of the interstate shipment, it was held that the Federal Food, Drug & Cosmetic Act applied. Cf. *F.T.C.* v. *Mandel Brothers*, 359 U.S. 385, 391.

That the measure of the extortion was the amount of concrete sent to the building site, rather than the sand coming to Rider through the channels of interstate commerce, is not significant from the standpoint of federal jurisdiction. In either event, the burden is one which clearly affects the interstate commodity. As numerous Sherman Act cases demonstrate, local restraints upon builders or upon processors of goods may restrain the free flow of commerce in the ingredient materials. See, *e.g., United States* v. *Women's Sportswear Assn.*, 336 U.S. 460, 464, and *United States* v. *Employing Plasterers Assn.*, 347 U.S. 186, 189. Cases arising under the National Labor Relations Act make the same point. *Labor Board* v. *Fainblatt*, 306 U.S. 601, 604–606; *Labor Board* v. *Bradford Dyeing Assn., supra,* 310 U.S. at 326; *Labor Board* v. *Denver Building & Const. Trades Council*, 341 U.S. 675. As stated in the *Denver* case (p. 684):

> * * * The fact that the instant building, after its completion, might be used only for local purposes does not alter the fact that its construction, as distinguished from its later use, affected interstate commerce.

Other cases involving application of the Hobbs Act disclose factual situations similar to this one. In *Hulahan* v. *United States,* 214 F. 2d 441 (C.A. 8), certiorari denied, 348 U.S. 856, the prosecution was based on extortion from three construction companies, two of which were dependent upon local labor (represented in part by the appellant in that case) and upon equipment, supplies and materials shipped into the state of use from other states. One of the con-

struction companies was engaged in a home development project, a second company in the construction of a flour packaging and storage building for a company which used the instrumentalities of interstate commerce for obtaining grain and distributing the company's products, and the third in construction of new runways and the improvement of the old runways of the St. Louis airport. The court of appeals stated, in affirming the conviction (p. 445):

> * * * We have no doubt that Congress has the power to deal with extortion or attempted extortion actually or potentially affecting interstate commerce, just as it has power to deal with unfair labor practices so affecting interstate commerce. [Citing cases.]
>
> It seems apparent from the language of the statute that it was the intent of Congress to protect interstate commerce against extortion or attempted extortion which in any way or in any degree reasonably could be regarded as affecting such commerce. The exaction of tribute from contractors engaged in local construction work who are dependent upon interstate commerce for materials, equipment and supplies, or who are engaged in constructing facilities to serve such commerce, is, in our opinion, proscribed by the statute in suit.

A prior case in the Eighth Circuit involved extortions from independent motion picture exhibitors. *Nick* v. *United States*, 122 F. 2d 660 (C.A. 8), certiorari denied, 314 U.S. 687. The court of appeals affirmed the conviction, relying on *Labor Board* v. *Fainblatt*, 306 U.S. 601. The opinion states, 122 F. 2d at 668:

> * * * There [in *Fainblatt*] the effect was upon the origination of interstate commerce. The situation before us affects the termination or purpose of interstate commerce and is just as effective in preventing such commerce. The only purpose for shipping these picture films in interstate commerce is to have them licensed or leased for exhibition purposes. If exhibitors are prevented or seriously obstructed in exhibiting the films they will not buy them. If exhibitors will not buy the films they will not be shipped in interstate commerce. In effect upon interstate commerce, there is no difference between preventing the films entering interstate commerce and in preventing them being used at the points to which they may be shipped—in either case, the films will not be shipped because of the obstruction.

See, also, *United States* v. *Compagna*, 146 F. 2d 524, 527 (C.A. 2), certiorari denied, 324 U.S. 867; *Anderson* v. *United States*, 262 F. 2d 764, 770 (C.A. 8), certiorari denied, 360 U.S. 929; *Bianchi* v. *United States*, 219 F. 2d 182, 190–191 (C.A. 8), certiorari denied, 349 U.S. 915; *United States* v. *Floyd*, 228 F. 2d 913, 915–916 (C.A. 7), certiorari denied, 351 U.S. 938.

C. INTERSTATE COMMERCE IN STEEL WAS AFFECTED

The threat that petitioner used to extort money from Rider was that he would cause labor trouble and disable Rider from performing his subcontract to supply concrete for construction of a steel mill. The mill that was being built was a new venture for the Pittsburgh Steel Company which had not previously built a hot rolled plant (R. 54). The new steel plant went into operation in March 1953 (R.

55), before Rider's contract was completed, and 80 percent of its products were shipped interstate (*ibid.*). In these circumstances, we see no escape from the conclusion that the statutory test—obstructing, delaying or affecting commerce *in any way or degree* (see *supra*, pp. 24-25)—was met. Any delay in construction of the plant, any increased costs in its construction, any defects in the work would have a palpable and immediate effect on the steel company and upon its interstate trade.

Since the extortion was successful and performance of the contract was not interrupted, one cannot prove directly the precise consequences which would have resulted from the outbreak of labor trouble. However, it is hardly a matter of speculation that labor trouble of the kind that was threatened, if it had taken place, would have affected the entire project. Nor is it a matter of speculation that, if the authorized subcontractor had been forced to abandon his contract, some delay would necessarily have resulted in obtaining a new supplier.[9]

We are not suggesting that federal jurisdiction is to be extended to activities of purely local significance. Nor are we suggesting that members of the construction industry are generally or broadly subject to federal regulation. It is a familiar precept that a business may be subject to federal jurisdiction in some of its aspects, though not in others. For example, application of the Fair Labor Standards Act, which turns on the activities of the employees

[9] We put aside the potential effect of extortion on the price and terms which might be obtained from other suppliers.

and not the business of the employer, may result in a company's being subject to the requirements of that Act with respect to certain of its employment relationships, although it is not comprehensively covered. See *Mitchell* v. *Lublin, McGaughy & Assoc.*, 358 U.S. 207, 211–212. In short, it is not our contention that the construction industry has inherent characteristics which make it fully a subject of federal concern. We urge simply that Congress may protect interstate trade and commerce—in this instance, interstate trade in steel—from criminal activities which affect that commerce, irrespective of whether the "squeeze" is locally applied.

Cases arising under the National Labor Relations Act provide a close analogy to the case at bar. In that statute, like this one, Congress undertook to exert jurisdiction coextensive with the commerce power. *Labor Board* v. *Fainblatt*, 306 U.S. 601, 606–607. Moreover, since the economic power of organized labor derives fundamental support from the protections accorded by federal law, it is especially appropriate that one look to the scope of the Board's jurisdiction under the Labor Act in considering the scope of federal jurisdiction over persons who seek to misuse the power of organized labor by threatening to invoke it for the criminal purpose of extortion rather than the legitimate end of collective bargaining. We therefore think it is relevant to raise the question—Would the Labor Board be empowered to exercise jurisdiction over a labor dispute involving the employees of a building contractor engaged in constructing a steel mill for a steel company which ships its products in interstate commerce? We think

that the decided cases leave no room for doubt that the answer is "Yes."

There are numerous instances in which the Board has been upheld in its exercise of jurisdiction over intrastate companies which supply facilities, goods or services to others who, in turn, engage in interstate commerce. Thus, "[e]ver since the question was fully argued and decided in *Consolidated Edison Co.* v. *Labor Board,* 305 U.S. 197 (1938), it has been clear that federal labor legislation, encompassing as it does all industries 'affecting commerce,' applies to a privately owned public utility whose business and activities are carried on wholly within a single state." *Bus Employees* v. *Wisconsin Board,* 340 U.S. 383, 391. In the same case, this Court cited with approval (p. 391, note 13) the case of *Labor Board* v. *Baltimore Transit Co.,* 140 F. 2d 51, 53 (C.A. 4), in which federal jurisdiction over a local transit company was sustained because a stoppage of the company's operations would interfere with businesses engaged in interstate commerce "whose workers are transported to and from work on its cars and buses." In *Labor Board* v. *Thomas Rigging Co.,* 211 F. 2d 153 (C.A. 9), certiorari denied, 348 U.S. 871, the court sustained the Board's exercise of jurisdiction over a labor dispute involving a subcontractor hired to install machinery in a plant then under construction, which was to be used subsequently to manufacture goods for commerce. The Board has also regularly exercised jurisdiction over companies which are locally engaged in mining or producing building materiel which is thereafter sold within the state and used in con-

structing or maintaining the state's highway system. See cases collected in *White's Uvalde Mines*, 117 NLRB 1128, 1137–1138.

We recognize that early cases arising under the Federal Employers' Liability Act enunciated the doctrine that "new construction" is not commerce even though the work, when completed, will become a part of commerce. See, *e.g.*, *Raymond* v. *Chicago, Milwaukee & St. Paul Railway Company*, 243 U.S. 43. That Act, however, was far narrower in its provision for coverage;[10] compared to more recent exercises of the federal regulatory power, the original Federal Employers' Liability Act is a statute "of another vintage", *Mitchell* v. *C. W. Vollmer & Co.*, 349 U.S. 427, 429. Moreover, the "new construction" doctrine has now been explicitly rejected in the very area in which it had its origin. *Southern Pacific Co.* v. *Gileo*, 351 U.S. 493, 500, in terms rejected the doctrine and sustained coverage of a railroad employee engaged in building new cars.

Although Congress, in the Fair Labor Standards Act, has not exercised the totality of its power to control all activities affecting commerce (*Kirschbaum Co.* v. *Walling*, 316 U.S. 517, 522), cases arising under that statute likewise support the conclusion that the situation posed by the instant case is one which is cer-

[10] In its original form, the Act provided that "every common carrier by railroad while engaging in commerce" between the states "shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce", etc. In 1939, Congress covered in employees whose duties "directly or closely and substantially affect such commerce". See *Southern Pacific Co.* v. *Gileo*, 351 U.S. 493, 496–498.

tainly within federal jurisdiction. Maintenance employees who service buildings used by tenants who engage in interstate commerce are within the statute's coverage. *Kirschbaum Co.* v. *Walling, supra; Schulte Co.* v. *Gangi,* 328 U.S. 108. The Act applies to construction workers building a new unit in an intercoastal waterway (*Mitchell* v. *C. W. Vollmer & Co.,* 349 U.S. 427) and to similar workers engaged in the enlargement of an industrial plant producing goods for commerce. *Walling* v. *McCrady Construction Co.,* 156 F. 2d 932 (C.A. 3), certiorari denied, 329 U.S. 785. It reaches workers employed by an employer who repairs machinery for other employers who, in turn, produce goods for commerce. *Roland Co.* v. *Walling,* 326 U.S. 657. It covers off-the-road employees engaged in the production of material that is thereafter applied to interstate roads (*Alstate Construction Co.* v. *Durkin,* 345 U.S. 13); employees of a local contractor who engages in preliminary drilling which may eventuate in the production and shipment of oil (*Warren-Bradshaw Co.* v. *Hall,* 317 U.S. 88); and employees of a mutual irrigation company which collects and distributes water, wholly within a single state, to farmers who, in turn, raise agricultural produce which is ultimately shipped in commerce (*Farmers Irrigation Co.* v. *McComb,* 337 U.S. 755).

In sum, we submit that Congress, in enacting the Hobbs Act, proposed to exercise the full measure of the constitutional commerce power, and that delays in construction are within the reach of federal regulation where the facility being constructed is one

designed for the production of goods to be sold in interstate channels.

III. THERE WAS NO PREJUDICIAL VARIANCE BETWEEN THE CHARGE IN THE INDICTMENT AND THE PROOF [11]

The first paragraph of the indictment charged that a part of the interstate commerce consisted of transporting supplies for use in making concrete "used in the construction and erection of a factory or plant for processing steel" (R. 6). The second paragraph of the indictment described the "sand commerce" which Rider needed in order to perform his contract to supply concrete "for the erection of a steel processing plant at Allenport, Pennsylvania" (*ibid.*). The charging part of the indictment alleged (R. 7) that petitioner obstructed, delayed and affected "interstate commerce between the several states of the United States and the movement of the aforesaid materials and supplies in such commerce."

It thus appears that there is a general allegation as to effect upon interstate commerce; that there is additionally a specific description of effect upon "sand commerce"; and that there is reference to Rider's contract to supply concrete for the steel mill construction project.

We emphasize, to begin with, that the statute does not require that a particular aspect of interstate commerce be burdened by the proscribed conduct; it is enough that some aspect of interstate commerce is

[11] As pointed out above (pp. 20–22), there would be no occasion to reach this issue if the Government should be sustained in its contentions (1) that there was no commerce issue which had to be submitted to the jury and (2) that the evidence as to "sand commerce" was legally sufficient.

affected. It would not have been fatal if the indictment had alleged an effect upon commerce without "clarifying details" (*United States* v. *Varlack*, 225 F. 2d 665, 670 (C.A. 2) (Hobbs Act prosecution)), though doubtless such an indictment would have justified grant of a motion for a bill of particulars (*ibid.*). In *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, this Court pointed out (p. 250) that "variation between the means charged and the means utilized is not fatal."

Since the statutory requirement of alleging the involvement of interstate commerce was met and the indictment is not defective as a matter of law, the question is whether petitioner was prejudiced. The relevant criteria are those set forth in *Berger* v. *United States*, 295 U.S. 78, 82:

> The general rule that allegations and proof must correspond is based upon the obvious requirements (1) that the accused shall be definitely informed as to the charges against him, so that he may be enabled to present his defense and not be taken by surprise by the evidence offered at the trial; and (2) that he may be protected against another prosecution for the same offense.

The introduction of evidence relating to commerce in steel did not disable petitioner from presenting a defense on that aspect of the case. Petitioner objected to the testimony on grounds of relevancy (R. 50–52), but there is no suggestion that he questioned the accuracy of the testimony (testimony of an official of the Pittsburgh Steel Company that most of the produce of the company's Allenport plant is shipped

from Pennsylvania to other states) or that he desired to introduce any independent evidence on that subject. The testimony was given early in a trial which lasted for more than two weeks (R. 3). No request for time was made so that rebuttal evidence might be offered, although it is notable that defense counsel made requests of that nature in relation to other matters. See, *e.g.*, R. 266.

Moreover, there was no possibility that petitioner, if acquitted on the charge contained in the indictment, could have been subjected to a second prosecution. Petitioner's argument that there was a variance which could have resulted in double jeopardy must rest on the assumption that one act of extortion would constitute multiple crimes, depending on the number of ways in which interstate commerce was affected. In other words, in this case the assumption is that extortion affecting commerce in sand is one crime and the same extortion affecting commerce in steel is a separate crime separately punishable. The statute has never been so interpreted. The gist of the crime is extortion. The extortion must affect interstate commerce to be federally cognizable, but this does not change the nature of the offense. One extortion is one crime, no matter how many ways interstate commerce is directly or incidentally affected. This Court has held that one shot fired at two federal officers constitutes only one crime even though federal jurisdiction under the relevant statute rests upon the protection of government personnel. *Ladner* v. *United States*, 358 U.S. 169. Certainly, then, this Court would not sanction a multiplication of offenses in the

present situation. The danger suggested by petitioner does not exist.

CONCLUSION

It is respectfully submitted that the judgment below should be affirmed.

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OCTOBER 1959.

APPENDIX

The Anti-Racketeering Act, 1934, 48 Stat. 979–980, read as follows:

> That the term "trade or commerce", as used herein, is defined to mean trade or commerce between any States, with foreign nations, in the District of Columbia, in any Territory of the United States, between any such Territory or the District of Columbia and any State or other Territory, and all other trade or commerce over which the United States has constitutional jurisdiction.
>
> SEC. 2. Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—
>
> (a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona-fide employer to a bona-fide employee; or
>
> (b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or
>
> (c) Commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate sections (a) or (b); or
>
> (d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing acts; shall, upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from one to ten years or by a fine of $10,000, or both.

SEC. 3. (a) As used in this Act the term "wrongful" means in violation of the criminal laws of the United States or of any State or Territory.

* * * * *

The 1946 Amendment, 60 Stat. 420, read:

That the Act entitled "An Act to protect trade and commerce against interference by violence, threats, coercion, or intimidation", approved June 18, 1934 (48 Stat. 979; U.S.C., 1940 edition, title 18, secs. 420a—420e), be, and it is hereby, amended to read as follows:

"TITLE I

"SEC. 1. As used in this title—

"(a) The term 'commerce' means (1) commerce between any point in a State, Territory, or the District of Columbia and any point outside thereof, or between points within the same State, Territory, or the District of Columbia but through any place outside thereof, and (2) commerce within the District of Columbia or any Territory, and (3) all other commerce over which the United States has jurisdiction; and the term 'Territory' means any Territory or possession of the United States.

"(b) The term 'robbery' means the unlawful taking or obtaining of personal property, from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or anyone in his company at the time of the taking or obtaining.

"(c) The term 'extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

"SEC. 2. Whoever in any way or degree obstructs, delays, or affects commerce, or the

movement of any article or commodity in commerce, by robbery or extortion, shall be guilty of a felony.

"SEC. 3. Whoever conspires with another or with others, or acts in concert with another or with others to do anything in violation of section 2 shall be guilty of a felony.

"SEC. 4. Whoever attempts or participates in an attempt to do anything in violation of section 2 shall be guilty of a felony.

"SEC. 5. Whoever commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of section 2 shall be guilty of a felony.

"SEC. 6. Whoever violates any section of this title shall, upon conviction thereof, be punished by imprisonment for not more than twenty years or by a fine of not more than $10,000, or both."

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SUPREME COURT OF THE UNITED STATES

No. 35.—October Term, 1959.

Nicholas A. Stirone, Petitioner, v. United States.	On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[January 11, 1960.]

Mr. Justice Black delivered the opinion of the Court.

Petitioner Nicholas Stirone was indicted and convicted in a federal court for unlawfully interfering with interstate commerce in violation of the Hobbs Act.[1] The crucial question here is whether he was convicted of an offense not charged in the indictment.

So far as relevant to this question the indictment charged the following.

From 1951 until 1953, a man by the name of William G. Rider had a contract to supply ready-mixed concrete from his plant in Pennsylvania to be used for the erection of a steel processing plant at Allenport, Pennsylvania. For the purpose of performing this contract Rider

> "caused supplies and materials [sand] to move in interstate commerce between various points in the

[1] 62 Stat. 793, 18 U. S. C. § 1951.

"(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

"(b) As used in this section—

"(2) The term 'extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."

> United States and the site of his plant for the manufacture or mixing of ready mixed concrete; and more particularly, from outside the State of Pennsylvania into the State of Pennsylvania."

The indictment went on to charge that Stirone, using his influential union position,

> "did . . . unlawfully obstruct, delay and affect interstate commerce between the several states of the United States and the movement of the aforesaid materials and supplies in such commerce, by extortion . . . of $31,274.13 . . . induced by fear and by the wrongful use of threats of labor disputes and threats of the loss of, and the obstruction and prevention of, performance of his contract to supply ready mixed concrete."

The district judge, over petitioner's objection as to its materiality and relevancy, permitted the Government to offer evidence of an effect on interstate commerce not only in sand brought into Pennsylvania from other States but also interference with steel shipments from the steel plant in Pennsylvania into Michigan and Kentucky. Again over petitioner's objections the trial judge charged the jury that so far as the interstate commerce aspect of the case was concerned, Stirone's guilt could be rested either on a finding that (1) sand used to make the concrete "had been shipped from another state into Pennsylvania" or (2) "Mr. Rider's concrete was used for constructing a mill which would manufacture articles of steel to be shipped in interstate commerce . . ." from Pennsylvania into other States. On motion of petitioner for arrested judgment, acquittal or new trial, the District Court held that "A sufficient foundation for introduction of both kinds of proof was laid in the indictment." 168 F. Supp. 490, 495. The Court of Appeals affirmed, all the judges agreeing that interference with the sand movements into Pennsyl-

vania was barred by the Hobbs Act. 262 F. 2d 571. Judge Hastie and Chief Judge Biggs disagreed with the court's holding that Stirone could be tried and convicted for interference with the possible future shipments of steel from Pennsylvania to Michigan and Kentucky. 262 F. 2d 578, 580. They were of opinion that no interference with interstate steel shipments was charged in the indictment and that in any event it is an unreasonable extension of the Act to make a federal offense out of extortion from a man merely because he is supplying concrete to build a mill which after construction will produce steel, a part of which may, if processed, move in interstate commerce.

We agree with the Court of Appeals that Rider's dependence on shipments of sand from outside Pennsylvania to carry on his ready-mixed concrete business entitled him to the Hobbs Act's protection against interruption or stoppage of his commerce in sand by extortion of the kind that the jury found the petitioner had committed here. That Act speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence. The Act outlaws such interference "in any way or degree." 18 U. S. C. § 1951 (a). Had Rider's business been hindered or destroyed, interstate movements of sand to him would have slackened or stopped. The trial jury was entitled to find that commerce was saved from such a blockage by Rider's compliance with Stirone's coercive and illegal demands. It was to free commerce from such destructive burdens that the Hobbs Act was passed. *United States* v. *Green*, 350 U. S. 415, 420.

Whether prospective steel shipments from the new steel mills would be enough, alone, to bring this transaction under the Act is a more difficult question. We need not decide this, however, since we agree with the dissenting

judges in the Court of Appeals that it was error to submit that question to the jury and that the error cannot be dismissed as merely an insignificant variance between allegation and proof and thus harmless error as in *Berger* v. *United States*, 295 U. S. 78. The crime charged here is a felony and the Fifth Amendment requires that prosecution be begun by indictment.

Ever since *Ex parte Bain*, 121 U. S. 1, was decided in 1887 it has been the rule that after an indictment has been returned its charges may not be broadened through amendment except by the grand jury itself. In that case, the court ordered that some specific and relevant allegations the grand jury had charged be stricken from the indictment so that Bain might be convicted without proof of those particular allegations.[2] In holding that this could not be done, Mr. Justice Miller, speaking for the Court, said:

> "If it lies within the province of a court to change the charging part of an indictment to suit its own notions of what it ought to have been, or what the grand jury would probably have made it if their attention had been called to suggested changes, the great importance which the common law attaches to an indictment by a grand jury, as a prerequisite to a prisoner's trial for a crime and without which the

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[2] Bain was indicted for making a false statement "with intent to deceive *the Comptroller of the Currency and* the agent appointed to examine the affairs of said association . . . ." After sustaining demurrers of Bain to the indictment, the trial court went on to say that "thereupon, on motion of the United States, by counsel, the court orders that the indictment be amended by striking out the words '*the Comptroller of the Currency and*' therein contained." By this amendment it was intended to permit conviction of Bain without proof that he had deceived the Comptroller as the grand jury had charged.

Constitution says 'no person shall be held to answer,' may be frittered away until its value is almost destroyed." 121 U. S. 1, 10.

The Court went on to hold in *Bain*:

"that after the indictment was changed it was no longer the indictment of the grand jury who presented it. Any other doctrine would place the rights of the citizen, which were intended to be protected by the constitutional provision, at the mercy or control of the court or prosecuting attorney . . . ." 121 U. S. 1, 13.

The *Bain* case, which has never been disapproved, stands for the rule that a court cannot permit a defendant to be tried on charges that are not made in the indictment against him. See also *United States* v. *Norris*, 281 U. S. 619, 622. Cf. *Clyatt* v. *United States*, 197 U. S. 207, 219, 220. Yet the court did permit that in this case. The indictment here cannot fairly be read as charging interference with movements of steel from Pennsylvania to other States nor does the Court of Appeals appear to have so read it. The grand jury which found this indictment was satisfied to charge that Stirone's conduct interfered with interstate importation of sand. But neither this nor any other court can know that the grand jury would have been willing to charge that Stirone's conduct would interfere with interstate exportation of steel from a mill later to be built with Rider's concrete. And it cannot be said with certainty that with a new basis for conviction added, Stirone was convicted solely on the charge made in the indictment the grand jury returned. Although the trial court did not permit a formal amendment of the indictment, the effect of what it did was the same. And the addition charging interference with steel exports here is neither trivial, useless, nor innocuous. Compare *Ford* v.

United States, 273 U. S. 593, 602; *Goto* v. *Lane*, 265 U. S. 393, 402. While there was a variance in the sense of a variation between pleading and proof, that variation here destroyed the defendant's substantial right to be tried only on charges presented in an indictment returned by a grand jury. Deprivation of such a basic right is far too serious to be treated as nothing more than a variance and then dismissed as harmless error. Compare *Berger* v. *United States*, 295 U. S. 78. The very purpose of the requirement that a man be indicted by grand jury is to limit his jeopardy to offenses charged by a group of his fellow citizens acting independently of either prosecuting attorney or judge.[3] Thus the basic protection the grand jury was designed to afford is defeated by a device or method which subjects the defendant to prosecution for interference with interstate commerce which the grand jury did not charge.

Here, as the trial court charged the jury, there are two essential elements of a Hobbs Act crime: interference with commerce, and extortion. Both elements have to be charged. Neither is surplusage and neither can be treated as surplusage. The charge that interstate commerce is

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[3] "Yet the institution [the grand jury] was adopted in this country, and is continued from considerations similar to those which give to it its chief value in England, and is designed as a means, not only of bringing to trial persons accused of public offences upon just grounds, but also as a means of protecting the citizen against unfounded accusation, whether it comes from government, or be prompted by partisan passion or private enmity. No person shall be required, according to the fundamental law of the country, except in the cases mentioned, to answer for any of the higher crimes unless this body, consisting of not less than sixteen nor more than twenty-three good and lawful men, selected from the body of the district, shall declare, upon careful deliberation, under the solemnity of an oath, that there is good reason for his accusation and trial." *Ex parte Bain*, 121 U. S. 1, 11. See also *Costello* v. *United States*, 350 U. S. 359, 362–363, n. 6.

affected is critical since the Federal Government's jurisdiction of this crime rests only on that interference. It follows that when only one particular kind of commerce is charged to have been burdened a conviction must rest on that charge and not another, even though it be assumed that under an indictment drawn in general terms a conviction might rest upon a showing that commerce of one kind or another had been burdened. The right to have the grand jury make the charge on its own judgment is a substantial right which cannot be taken away with or without court amendment. Here, as in the *Bain* case, we cannot know whether the grand jury would have included in its indictment a charge that commerce in steel from a nonexistent steel mill had been interfered with. Yet because of the court's admission of evidence and under its charge this might have been the basis upon which the trial jury convicted petitioner. If so, he was convicted on a charge the grand jury never made against him. This was fatal error. Cf. *Cole* v. *Arkansas*, 333 U. S. 196; *DeJonge* v. *Oregon*, 299 U. S. 353.

Reversed.